Hospital Cristo Redentor, Inc. d/b/a Hospital Cristo Redentor *and* Unidad Laboral De Enfermeras(Os) Y Empleados De La Salud. Case 24–CA–9069

July 31, 2006

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

On February 24, 2003, Administrative Law Judge Paul Buxbaum issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel and the Charging Party filed briefs in support of the judge's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

We adopt the judge's finding that the Respondent violated Section 8(a)(1) of the Act by interrogating employee Carlos Garcia Santiago (Garcia) regarding his union activities, and by threatening Garcia through suggestions that his union activities would impede his prospects for a promotion or would result in disciplinary action. We further adopt the judge's finding that the Respondent violated Section 8(a)(3) and (1) by discharging Garcia as a result of his union activities.

In addition, we agree with the judge, for the reasons expressed in his decision and as further set forth below, that the Respondent earlier had violated Section 8(a)(3) and (1) by suspending Garcia because of his union activities. Contrary to our colleague's partial dissent, we find that the Respondent has failed to meet its burden to establish that it would have suspended Garcia even in the absence of his union activities.

I. FACTS

In 1995, Garcia began working as a registered nurse in the emergency room of the Guayama Area Hospital, the public predecessor to the Respondent. In June 1998, the Respondent purchased and assumed operation of the hospital. Upon the Respondent's assumption of operations, Garcia retained his position as an ER nurse.[2]

Shortly after the Respondent's assumption of operations, and following a Board-conducted election, the Union was certified as the bargaining representative for, among others, a unit of registered nurses employed by the Respondent. In November 1998, the Union and the Respondent commenced negotiations for a collective-bargaining agreement.

In January 1999, Garcia became the union delegate for the approximately 20 to 24 unit employees working in the Respondent's emergency room. Shortly after Garcia assumed that position, he received his first ever written disciplinary warning from his supervisor, Osvaldo Rivera David (Rivera).[3] The written warning urged Garcia to maintain a positive attitude toward his coworkers and to avoid "comments or negative criticism."[4] Several months later, on April 27, Garcia received from Rivera a second formal written warning, which indicated that, although there had been some improvement in Garcia's attitude, "incidents related to the comments or attitudes" had continued. The warning accordingly urged Garcia to avoid "that type of personal attitude or activity among his coworkers."

Over the course of the next 15 months, the Union filed a series of unfair labor practice charges against the Respondent, upon which the General Counsel issued a complaint and subsequent amended complaints.[5] During the same period of time, Garcia received a series of additional disciplinary warnings from his supervisor.[6] In addition, on July 27, 2000, Human Resources Director Lacot gave Garcia a written disciplinary warning reiterating some of the same purported attitude problems described in the earlier disciplinary warnings issued by Rivera.[7]

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] Similarly, following the Respondent's acquisition of the hospital, Ivette Lacot Ramos (Lacot) retained her position as the director of human resources, a position she had held since 1995.

[3] It is unclear from the record whether Garcia had ever previously received *any* disciplinary warning. Rivera indicated that he could not recall having given Garcia any disciplinary warnings, written or oral, prior to his becoming a union delegate.

[4] When asked at trial to explain those "attitude" problems, Rivera stated that Garcia had expressed dissatisfaction with some of the working conditions and policies at the hospital—including inequitable shift allotments and favoritism by management personnel—and had engaged in general gossip.

[5] The complaints alleged, inter alia, that the Respondent violated 8(a)(5) and (1) by making various unilateral changes in unit employees' terms and conditions of employment, refusing to provide requested information, and failing to bargain with the Union in good faith.

[6] These warnings, none of which were submitted into evidence, are described by the judge in Sec. II,A of his decision.

[7] The warning states, in pertinent part:

In February 2001,[8] Garcia attended a collective-bargaining session in his capacity as a union delegate. Approximately 2 weeks later, Supervisor Rivera issued another written disciplinary warning to Garcia, for failing to follow proper procedures in documenting the alteration of a medical notation in a patient's records. Subsequently, on March 29, the Respondent convened a disciplinary meeting with Garcia to discuss the medical documentation error and his "attitude problem," as described by Rivera in a disciplinary warning issued to Garcia approximately 1 week earlier.[9] Also on March 29, the Respondent convened a second meeting with Garcia, for the purpose of discussing his alleged possession of sexually inappropriate materials, including a photograph of Garcia (taken in a nonwork, social setting) exposing his underwear.[10] Thereafter, on April 11, Lacot gave Garcia a written "formal admonishment," which ostensibly served to memorialize the disciplinary meetings of March 29.[11]

> On July 7, 2000, we met with you because you were referred to our attention because of your attitude problems that have affected the normal operations of your department and the normal operations of the Institution.
>
> Your problem consists in discussing and making comments about the Institution matters, your department and your fellow workers in front of patients and visitors. These remarks concern the work shifts, the days off, the apparent favoritism of the Supervisor toward some of your coworker [sic], tasks incorrectly carried out, and lack of compliance of duties of your coworkers.
>
> In said interview, the importance of confidentiality and of maintaining an appropriate work environment was emphasized for the benefit of your coworkers, the patients and visitors and for the normal operations of the Institution. You frequently act as a "leader" of the group and you do not report the situation that arises with your coworkers and express it openly, where there are other persons, when it is important that you meet with your supervisor and share with him these situations.

The warning further characterizes Garcia's conduct as "disruptive of the peace and work" performed in work areas, as well as violative of the Respondent's "confidentiality rule."

[8] Unless otherwise indicated, all dates hereafter are in 2001.

[9] This warning does not appear in the record, and there was no testimony adduced regarding the conduct that triggered it.

[10] Garcia denied that he owned the materials or that he had brought them to the hospital premises, and there is no record evidence contradicting his denials.

Lacot testified that the Respondent took no further action with respect to this matter, as it concerned a personal matter that had no bearing on Garcia's work performance.

[11] As described more fully in the judge's decision, the April 11 admonishment includes a reference to the medical notation error and a detailed description of Garcia's alleged possession of sexually inappropriate materials in the workplace (including the fact that Garcia was told that the situation should not be repeated), notwithstanding Lacot's testimony that no action was taken against Garcia for this "personal matter" that had no bearing on his work. In addition, the document refers to an *allegation* that Garcia had made intimidating remarks, including one to the effect that he wished that a shooting would occur in the emergency room. However, as the document additionally notes, Garcia denied making any such remarks. As the judge noted, the record contains no evidence regarding the alleged remarks.

In large part, however, the April 11 document emphasizes Garcia's inappropriate "attitudes." In this regard, the admonishment references the July 27, 2000 warning issued to Garcia and indicates that the Respondent is formally admonishing Garcia "for disrupting the peace and the work being carried out in the work area . . . due to [his] ill-intentioned comments and inappropriate attitudes in [his] work area."

On May 11, just 1 month after the Respondent's issuance of the formal admonishment to Garcia, Lacot notified Garcia that the Respondent was suspending him for 10 days.[12] According to the formal suspension letter provided to Garcia, the Respondent deemed such disciplinary sanction warranted as a result of Garcia's further demonstration of an attitude problem and his "disrupt[ion] [of] the peace and work" being done in the emergency room.[13] Specifically, the letter proceeded to describe several incidents that occurred on April 23, when Garcia was serving as a shift leader in the emergency room. On the occasion at issue, the emergency room was short-staffed; instead of the usual complement of seven nurses, only four nurses were on duty,[14] three of whom were assigned to the triage and vital signs patient-care areas.[15] In addition, the lab escort—the individual responsible for the prompt transportation of patient samples to the laboratory for analysis—was on leave. As a consequence of these staffing irregularities, when it became necessary to transmit patient samples to the lab, Garcia himself performed this task. Garcia, as the shift leader, was also responsible for the key that provided access to the locked narcotics cabinet in the emergency room.

During two occasions on which Garcia left the emergency room to take patient samples to the lab, an attending physician prescribed a narcotic for an emergency room patient who began to experience convulsions; as Garcia retained possession of the key to the narcotics

[12] Garcia was advised of this disciplinary action at a meeting convened by Lacot and attended by Lacot, Rivera, and a union delegate. Contrary to Lacot's generalized testimony that, when meting out discipline, she always provides employees with an opportunity to explain their version of events, Garcia testified that he was not given any such opportunity.

[13] In this regard, the letter enumerates several instances of prior conduct that served as the basis for the Respondent's earlier "intervention with" (i.e., discipline of) Garcia, including the conduct described in the July 27, 2000 warning and the April 11, 2001 formal admonishment.

[14] The record reveals that, in addition to Garcia, registered nurses Mariam Cedeno Torres (Cedeno) and Antonio Reyes Pillot (Reyes), and an unidentified licensed practical nurse, worked in the emergency room during the April 23 shift at issue.

[15] Garcia's uncontradicted testimony reveals that supervisor Rivera had instructed Garcia that personnel working in these critical patient-care areas were not to be assigned the task of transporting samples to the laboratory (i.e., they were not to be taken away from their duties in the emergency room).

cabinet when he went to the laboratory,[16] however, the administration of the prescribed medication was temporarily delayed until Garcia could be located in the laboratory.[17]

Later during the same shift, Garcia used the loudspeaker to request assistance from his coworkers in the emergency room. The precise nature of Garcia's loudspeaker remarks remains unclear. Although the suspension letter alleged that Garcia went to the loudspeaker and stated "that there is a lot of work, that you were the only one working and nobody was helping you," the letter also noted that Garcia specifically denied making such remarks. At the hearing, Garcia testified that, because nurse Reyes was absent from his work area at a time at which a patient required medical attention, he merely used the loudspeaker to make the following request: "Mr. Reyes, please pass by your area. You have a patient." The suspension letter also alleged that two of Garcia's coworkers complained about his loudspeaker remarks; the record, however, does not substantiate that claim.[18]

[16] The record does not support our dissenting colleague's contention that Garcia's conduct in leaving the emergency room with the narcotics key was "in direct contravention of hospital policy." Although Garcia testified—in response to counsel for the General Counsel's question as to the "policy" regarding the narcotics key—that the persons responsible for the narcotics key on a given shift should not leave the emergency room, there is no record evidence concerning any official hospital policy in this regard. Indeed, it is uncontroverted that at least one other nurse left the emergency room with the narcotics key without being disciplined.

Presumably, any nurse in possession of the key is "expected" to remain in the emergency room during the shift. Contrary to our dissenting colleague, however, and in light of the evidence taken as a whole, we cannot say that this common-sense expectation amounts to a policy. Nor does this "expectation" address the situation with which Garcia was confronted as a result of the Respondent's failure to adequately staff the emergency room—the decision whether to remain in the emergency room or to perform the other important task of timely delivering patient test samples to the laboratory.

[17] Contrary to our dissenting colleague's representation, the record does not establish that Garcia did not tell any of his coworkers where he was going; nurse Cedeno simply testified that she *did not remember* whether Garcia had told anyone where he was going on either occasion. In any event, Cedeno clearly testified that, at least with respect to the first occasion, she *knew* that Garcia had gone to the laboratory, as she had seen him leaving the emergency room with the box that is utilized for transporting patient samples to the lab.

[18] The record contains only one employee report concerning the events of April 23. That report, written by nurse Cedeno, makes no mention of any loudspeaker remarks by Garcia but, rather, describes only Garcia's absence from the emergency room with the narcotics key.

Further, neither nurse Cedeno nor nurse Reyes—the two coworkers known to have worked with Garcia on the April 23 shift in question—contradicted Garcia's account of his loudspeaker remarks or otherwise testified in support of any alternative account, despite the fact that both employees testified regarding the events of that day.

II. JUDGE'S DECISION

On the basis of the foregoing facts, the judge concluded that the Respondent violated Section 8(a)(3) and (1) by suspending Garcia because of his union sympathies and activities. The judge first concluded that the General Counsel met his *Wright Line*[19] burden to establish that the Respondent had knowledge of Garcia's union activities and that those activities were a motivating factor in the Respondent's decision to suspend him. Specifically, the judge found that Garcia was an active union supporter: he attended union meetings, urged his coworkers to support the Union, served as the union delegate for the emergency room employees, and participated in two union-organized protests and a work stoppage. The judge further found that the testimony of Respondent witnesses Lacot and Rivera, as well as certain documentary evidence, established that the Respondent had knowledge of Garcia's union activities. Finally, relying on both direct and circumstantial evidence, the judge found that Garcia's union activities were a motivating factor in the Respondent's decision to suspend him. As to direct evidence, the judge relied on Supervisor Ausberto Felix Ortiz' unlawful interrogation of, and threatening remarks directed to, Garcia regarding his union activities, as well as Lacot's comments to a union representative that Garcia's attitude problems would not be tolerated and could result in his discharge, especially in light of his role as the union delegate. The judge further found that circumstantial evidence—including the timing of the Respondent's disciplinary actions against Garcia, the Respondent's repeated exaggeration of Garcia's purported misconduct, and the gaps in documentation of the Respondent's purported disciplinary actions against Garcia—served to establish that Garcia's union activities were a motivating factor in the Respondent's decisions to suspend him. Having concluded that the General Counsel met his initial burden under *Wright Line*, the judge then considered whether the Respondent met its consequent burden to demonstrate that it would have suspended Garcia even in the absence of his union activity.

Upon examination of the suspension letter, the judge determined that, from the Respondent's perspective, the "gravamen of [the] offense" warranting Garcia's suspension was his use of the loudspeaker on April 23. Although the judge noted that the suspension letter additionally referred to Garcia's absence from the emergency room with the narcotics key, he concluded—based on both the letter's cursory mention of the incident and La-

[19] 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

cot's testimony that Garcia's conduct in that regard represented a "minor offense"—that the narcotics key incident did not figure prominently in the Respondent's suspension decision.[20] With respect to Garcia's use of the loudspeaker, the judge observed that, because the emergency room was "severely understaffed," Garcia "felt frustrated" and "may have chosen an undiplomatic means of seeking more staffing assistance." Nevertheless, the judge found that there was no evidence that Garcia used obscene or threatening language or that his use of the loudspeaker interfered with the work of his colleagues or the operation of the hospital. The judge ultimately concluded that, at most, Garcia had engaged in a "brief outburst." Considering both of the purported offenses set forth in the suspension letter—the narcotics key incident and the use of the loudspeaker—the judge concluded that the Respondent had failed to establish that it would have suspended Garcia in the absence of his union activity.

III. ANALYSIS

The Respondent does not challenge the judge's determination that Garcia's union activity was a motivating factor in the Respondent's decision to suspend him, i.e., that the General Counsel satisfied his *Wright Line* burden. For the reasons that follow, we agree with the judge's further determination, which the Respondent does challenge, that the Respondent failed to demonstrate that it would have suspended Garcia even in the absence of his union activity.

The Respondent primarily relies on the two alleged offenses that it set forth in the suspension letter that it issued to Garcia: his absence from the emergency room with the narcotics key, and his use of the loudspeaker. We find that neither of those alleged offenses, taken separately or together, was the true reason for the Respondent's conduct.[21]

As to Garcia's absence from the emergency room with the narcotics key, the Respondent effectively has conceded that the incident was not the true reason for Garcia's suspension. Human Resources Director Lacot—the official who prepared Garcia's suspension letter and advised him of his suspension—specifically identified Garcia's conduct with respect to the narcotics key as a "minor offense."[22] Indeed, Lacot further testified that she never disciplined Garcia for leaving the emergency room with the key.[23]

The judge suggested that Lacot's characterization of the narcotics key incident as a "minor offense" may reflect the Respondent's recognition that Garcia had been confronted with a Hobson's choice. That is, he was confronted with the understaffing of the emergency room (a matter over which he had no control) and the absence of the employee responsible for the transportation of patient samples to the lab. On the other hand, there was Supervisor Rivera's instruction to Garcia that personnel working in triage and critical patient-care areas were not to be removed from their duties. Because there was no hospital policy or protocol providing guidance as to the appropriate course of conduct under such circumstances, Garcia was compelled to choose a course of action from among several undesirable alternatives. Thus, it was reasonable for the Respondent to view his conduct as, at most, a minor transgression because it was the result of a Hobson's choice created by the Respondent itself. In addition, it was viewed as "minor offense" in the sense that the Respondent had declined to discipline other employees who had engaged in similar conduct in the past.[24] In these circumstances, it is not surprising that

[20] Elsewhere in his decision, the judge surmised that Lacot's characterization of the narcotics key incident as a "minor offense" reflected the Respondent's recognition that Garcia was confronted with a dilemma as a result of the understaffing of the emergency room, which was a matter beyond Garcia's control.

[21] We note that the General Counsel did not allege that Garcia's use of the loudspeaker constituted protected activity.

[22] Our dissenting colleague suggests that the judge failed to examine Lacot's testimony in this regard in its proper context. It is clear, however, that Lacot explicitly identified "problems with the narcotics key" as an example of a minor offense committed by Garcia specifically. Although we acknowledge that Lacot did not expressly identify Garcia's April 23 departure from the emergency room with the narcotics key as the "problem" to which she was referring, there is no record evidence concerning any other event or incident involving Garcia and the narcotics key.

[23] Support for the conclusion that Lacot did not in fact suspend Garcia based on the key incident, despite the inclusion of a description of the key incident in Garcia's suspension letter, is found in other record evidence pertaining to an unrelated matter: Notwithstanding the fact that more than a full page of Garcia's termination letter was devoted to a description of Garcia's alleged abandonment of his work on October 6, 2001, Lacot repeatedly testified that she did not consider or rely on that event in terminating Garcia. When asked why she included a description of that event in the termination letter if she did not rely on it, Lacot simply responded that she included it because it was a recent example of Garcia's "lack of discipline" (i.e., misconduct). As noted, below, other nurses have not been disciplined, even though they left the emergency room with the narcotics key. However, contrary to the dissent, we do not rely primarily on this disparate treatment to show that Garcia's similar conduct was a "minor offense." Rather, we rely primarily on Lacot's own characterization of Garcia's conduct as a "minor offense."

[24] There was uncontradicted testimony that other nurses occasionally had left the emergency room with the narcotics key, causing similar difficulties, yet there is no evidence in the record that any other nurse was ever disciplined for that conduct.

Garcia testified that both nurse Fajardo and nurse Reyes had, on earlier occasions, left the emergency room with the narcotics key and that, on both occasions, other employees had to be sent to locate them because narcotic medications were needed for patients (one of whom was convulsing, and one of whom was experiencing chest pains). Garcia further testified that he notified supervisor Rivera about those incidents, and that Rivera said that he would speak to the employees involved.

the Respondent deemed the narcotics key incident a minor offense. For this reason, we are satisfied that Garcia's absence from the emergency room with the narcotics key would not have resulted in his suspension, absent his protected activity.[25]

Having concluded that Garcia's absence from the emergency department with the narcotics key was not the true reason for which the Respondent suspended him, we must determine whether the Respondent's remaining justification—Garcia's use of the loudspeaker on April 23—demonstrates that it would have suspended him even absent his union activity. As an initial matter, we emphasize that it is not clear whether Garcia in fact made the remarks attributed to him in the suspension letter (i.e., that he was the only one working and that no one was helping him). As discussed above, the letter itself indicates that Garcia denied making the remarks. Further, at the hearing, Garcia testified that he merely used the loudspeaker to request that nurse Reyes report to his workstation to attend to a patient. Significantly, notwithstanding the fact that both nurse Cedeno and nurse Reyes—the two coworkers who were present at the time of Garcia's comments, and who were still employed by the Respondent at the time of the hearing—testified at the hearing, neither employee contradicted Garcia's version of events nor otherwise testified in support of any alternate version.

Nevertheless, even assuming arguendo that the suspension letter accurately reflects the remarks made by Garcia over the loudspeaker, we conclude that the Respondent has not satisfied its burden under *Wright Line*. As the record demonstrates, it was not the loudspeaker remarks per se which caused the discipline. Rather, according to the Respondent's own letter, the Respondent saw those remarks as following other activity by Garcia. Unfortunately for the Respondent, that other activity was protected. That is, the Respondent characterizes Garcia's loudspeaker remarks as yet another example of his "attitude" problem and his propensity to "disturb the peace and the work being done" in the emergency room, thereby justifying imposition of the next level in the Respondent's progressive discipline process.[26] Indeed, the suspension letter explicitly enumerates the prior instances of conduct that ostensibly served as the basis for Garcia's progression through the initial stages of the disciplinary process. Specifically, the letter references (1) the July 27, 2000 warning described in footnote 7, supra;[27] (2) the April 11, 2001 formal admonishment issued to Garcia; and (3) an April 29, 1999 warning issued to Garcia for absenteeism. As we discuss in further detail below, however, nearly all of the instances of prior conduct cited by the Respondent in the suspension letter involved protected union activity by Garcia. Consequently, the Respondent's reliance on that prior conduct, and its characterization of Garcia's loudspeaker remarks as further conduct of the same nature, cast significant doubt on the Respondent's claim that it suspended Garcia because of the loudspeaker remarks alone.[28]

Indeed, the loudspeaker incident is a pretext for the Respondent's true reason for suspending Garcia. First, with respect to the July 27, 2000 warning issued to Garcia, the warning itself reveals that the Respondent essentially reprimanded Garcia for engaging in protected concerted activities while serving as the union steward for the emergency department. Specifically, the warning letter indicates that Garcia has an "attitude problem." The letter explains that Garcia spoke up about supervisor favoritism, the allocation of work shifts, and other issues

Although Rivera testified at the hearing, he did not address this issue or in any way dispute Garcia's account, as would reasonably be expected if, as our dissenting colleague contends, Garcia's testimony was simply false or "self-serving." As stated above, there is no evidence that the Respondent ever disciplined either of those employees, or that it even investigated Garcia's allegations.

Nurse Fajardo did not testify at the hearing. Although nurse Reyes did testify, his testimony was unclear. In one instance, he stated that he has left the emergency room when he has had the narcotics key; at another point, however, he stated that if he needs to transport samples to the lab, he leaves the key with another registered nurse.

Nurse Cedeno's testimony on this point was similarly ambiguous. She testified, generally, that the person responsible for the narcotics key should keep his or her coworkers apprised of his or her location. Although she did not expressly state that she has ever left the emergency room with the key, her relevant testimony—quoted by our dissenting colleague—nevertheless implies that she or others have done so.

[25] Similarly, it is not our place to determine whether the Respondent would have been justified in imposing a more stringent disciplinary sanction had it chosen to do so, nor is it relevant whether we agree with the Respondent's characterization of the incident as a minor offense. It is not appropriate for the Board to substitute its judgment for that of an employer. See *Detroit Paneling Systems*, 330 NLRB 1170, 1171 fn. 6 (2000). In our view, our dissenting colleague does precisely that. Emphasizing the serious potential consequences that could have resulted from Garcia's absence from the emergency room with the narcotics key, our colleague concludes that Garcia's conduct served as adequate justification for his suspension.

[26] With respect to the Respondent's progressive discipline process, Lacot testified that, upon an employee's referral to the human resources department (i.e., after the employee has received verbal and/or written warnings from his or her supervisor), the employee ordinarily will be subjected to the following series of progressive disciplinary action: (1) exhortation (either verbal or written); (2) written formal admonishment; and (3) suspension (generally for a period of 5–10 days).

[27] Although the suspension letter actually cites a warning dated *June* 27, 2000, the letter's description of the incident resulting in discipline suggests that the Respondent intended to refer to the July 27, 2000 written warning, which appears in the record.

[28] We recognize that the complaint in this case does not allege that any of these warnings were unlawful, and we do not make any findings in this regard. We cite this evidence not to show a violation but, rather, to rebut a defense offered by the Respondent.

relating to the employees' terms and conditions of employment. In a similar vein, as discussed in detail in section I of this decision, the April 11, 2001 formal admonishment focuses primarily on Garcia's "ill-intentioned comments and inappropriate attitudes." Indeed, the admonishment specifically relies, in part, on the July 27, 2000 warning previously issued to Garcia.[29] Notably, the admonishment additionally includes a summary of Garcia's complaints that the Respondent "was persecuting" him and had singled him out for discipline as a result of his status as a union steward, as well as a concomitant denial of such allegations by the Respondent. Considering the formal admonishment as a whole, it appears that, as with the July 27, 2000 warning, the actual impetus for the Respondent's imposition of that disciplinary sanction was Garcia's protected activity.

Further, the record evidence plainly reveals that—pursuant to the Respondent's own policies—the Respondent was not justified in relying on the April 29, 1999 absenteeism warning as a basis for Garcia's suspension. In this regard, Lacot specifically testified that "if a year [goes] by, and the employee does not incur . . . this same error, we do not consider it" in determining the appropriate punishment for further infractions. Thus, as more than one year had elapsed between Garcia's receipt of the absenteeism warning and his subsequent suspension, the Respondent—according to its own policy—should not have considered Garcia's earlier episode of absenteeism.

In sum, the prior instances of discipline, on which the Respondent purports to rely as justification for the invocation of the latter stages of the progressive discipline process, were motivated by Garcia's union activities. In light of this, the Respondent is hard-pressed to contend that it would have suspended Garcia in the absence of his union activities. Further, the Respondent's inclusion in the suspension letter of references to conduct or situations that, by the Respondent's own admission or policies, should not serve as the basis for further disciplinary action (e.g., the absenteeism warning and the allegations relating to Garcia's possession of sexually inappropriate materials) suggests an effort by the Respondent to magnify the quantity or gravity of Garcia's alleged misconduct.[30] Accordingly, in light of these circumstances, and for all the foregoing reasons, we conclude that the Respondent has failed to demonstrate that it would have suspended Garcia in the absence of his union activity.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Hospital Cristo Redentor, Inc. d/b/a Hospital Cristo Redentor, Guayama, Puerto Rico, its officers, agents, successors, and assigns, shall take the action set forth in the Order, except that the attached notice is substituted for that of the administrative law judge.

Dated, Washington, D.C. July 31, 2006

Robert J. Battista, Chairman

Wilma B. Liebman, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER SCHAUMBER, dissenting in part.

I join my colleagues in adopting the judge's findings that Respondent violated Section 8(a)(1) by interrogating and threatening employee Carlos Garcia, and violated Section 8(a)(3) and (1) by subsequently discharging him.[1] However, contrary to my colleagues, I would reverse the judge's finding that Respondent violated the Act when it suspended Garcia for leaving his emergency room workstation with the only key to the narcotics cabinet not once, but twice, during the same shift, preventing the administration of medication to a convulsing patient on each occasion.

[29] In addition, the admonishment reprimands Garcia for allegedly making intimidating remarks, including one to the effect that he wished that a shooting would occur in the emergency room. As discussed above, however, the admonishment itself notes that Garcia denied making the remarks attributed to him, and there is no record evidence establishing that Garcia in fact made any such remarks.

Although the admonishment also references allegations that Garcia had brought sexually inappropriate materials into the workplace, Lacot specifically testified that the Respondent declined to take any disciplinary action against Garcia on that basis, as it constituted a "personal matter" that "had nothing to do with his work."

[30] Indeed, the Respondent appears to engage in similar exaggeration with respect to Garcia's alleged April 23 loudspeaker remarks. The suspension letter prepared by the Respondent states that two of Garcia's coworkers filed written reports complaining about his loudspeaker commentary. However, the record contains only one employee report concerning the events of April 23, and that report—written by nurse Cedeno—makes no mention of any loudspeaker remarks by Garcia but, rather, describes only Garcia's absence from the emergency room with the narcotics key.

[1] In adopting the judge's finding that the Respondent's discharge of employee Garcia violated Sec. 8(a)(3), I do not rely, for evidence of animus, on either Respondent's failure to produce documents to support Ivette Lacot Ramos' testimony that Garcia was issued numerous disciplinary warnings or on the adverse inference drawn by the judge as a result of the failure to call Executive Director Jose Cora Izquierdo to testify.

Facts

On April 23, 2001,[2] Garcia was the shift leader in the emergency room. In that capacity, he was responsible for the key to the narcotics cabinet. Because he was the only employee authorized to dispense narcotics during the shift, hospital policy dictated that he remain in the emergency room.[3] In direct contravention of this policy, Garcia left the emergency room with the narcotics key to take patient blood and urine samples to the laboratory for analysis. There is no evidence that Garcia told his coworkers where he was going,[4] but he was seen leaving his duty station on this occasion with blood samples, which are often take to the hospital laboratory. Garcia was away from the emergency room for at least 5 minutes during this first absence, and while he was gone a patient went into convulsions. An attending physician prescribed valium to control the seizure, but the other nurses were unable to obtain the medication from the locked narcotics cabinet. Another nurse on duty, Ms. Cedeno, reported in a statement prepared shortly after the incident that she had to repeatedly page Garcia over the public address system and question several employees as to his whereabouts before Garcia could be located and the medication administered.

Despite this incident, the potential consequences of which were severe,[5] Garcia left his duty station a second time later that same evening. He again told no one where he was going, and again took the narcotics key with him. The patient whose convulsions precipitated the earlier crisis had a second round of seizures, triggering yet another frantic search for Garcia. Garcia did not respond to repeated pages over the public address system, and Nurse Cedeno dispatched a maintenance worker to track him down. He was again found in the laboratory. Notwithstanding that fact that he had personally caused two serious crises for his coworkers, Garcia later announced over the emergency room loudspeaker that he was the only person working and that nobody was helping him. Nurse Cedeno filed a written complaint regarding Garcia's unprofessional conduct.[6]

The following day, Garcia attended a disciplinary meeting with his supervisor Osvaldo Rivera David, Human Resource Director Ivette Lacot Ramos, and a union representative. Garcia testified that Lacot informed him that he was being suspended for 10 days for "having put the work in the emergency room at risk" and for his offensive remarks over the loudspeaker. She also delivered a written suspension letter that specifically identified the narcotics key incidents and loudspeaker comments as the basis for the suspension. During the hearing, Lacot testified that the hospital considered any conduct "that would put a patient's health or . . . life in danger" to be a "major offense."

Judge's Decision

In concluding that Garcia's 10-day suspension was unlawful, the judge found that the General Counsel had established a prima facie case under *Wright Line*, and that Respondent failed to prove that it would have taken the same disciplinary action against Garcia regardless of his protected, concerted activities. With respect to Respondent's affirmative defense, the judge reasoned—despite Garcia's being told the suspension was for leaving his workstation with the narcotics key and insulting his coworkers over the loudspeaker, and despite the fact that the suspension letter expressly references both instances of unprofessional conduct—that "the gravaman of Garcia's offense" was misusing the loudspeaker. He then posited, though no one had so testified, that the loudspeaker incident fit within a prohibition in Respondent's employee handbook against "disorderly conduct," conduct the manual describes as "disturb[ing] the peace" or "the duties that are being carried out on the job." The judge concluded, based on his own definition of disturbing the peace, that the loudspeaker incident did not constitute such a disturbance because Garcia had not employed obscene or threatening language and the incident had not incited violence or disrupted the work of the staff. In any event, the judge found, the employee handbook did not authorize a suspension for such conduct, which he characterized as an understandable, though "undiplomatic," outburst caused by Respondent's failure to adequately staff the emergency room.

Analysis

I accept, for purposes of this analysis, that the General Counsel made out a prima facie case under *Wright Line*. However, contrary to my colleagues and the judge, I be-

[2] All dates are in 2001, unless otherwise noted.

[3] Although the record does not establish whether this policy was written, the judge found, contrary to my colleagues' contention, that such a policy existed, explaining that "[a]s the only person authorized to dispense narcotics during the shift, Garcia was expected to remain in the emergency room." Indeed, Garcia acknowledged that the "[narcotics] key should not leave the department." Further, two other nurses testified to the existence of this policy.

[4] The record does, however, reflect that Garcia's coworkers had to track him down by repeatedly paging him over the loudspeaker and sending someone out to search for him. Obviously, his coworkers could not have known from the fact that he left with laboratory samples where within the hospital he might have been at a given moment.

[5] Nurse Reyes, who was working the shift with Garcia and Nurse Cedeno, testified that a delay in administering medication to a convulsing patient could result in brain damage.

[6] A second written complaint apparently was filed by another nurse on duty that shift, but was not introduced into evidence. However, both nurse Reyes and nurse Cedeno testified at the hearing.

lieve that the Respondent met its rebuttal defense by proving that it would have suspended Garcia absent his protected activity.[7]

Specifically, the Respondent showed, both through testimony (Garcia's and Lacot's) and contemporaneous documentation (the suspension letter), that the reason for Garcia's suspension was his misconduct on April 23; namely leaving his workstation with the narcotics key twice and publicly airing his personal complaints over the emergency room loudspeaker. With respect to the narcotics key incident, the testimony reflects, and the judge acknowledged, that Garcia's unannounced departure from his workstation caused a delay in administering medication to a convulsing patient, and that the delay placed the patient's health, if not life, in jeopardy. Notwithstanding the foregoing, the judge found, and my colleagues agree, that the suspension was really for the loud speaker incident alone.[8] The judge reached this conclusion based not on credibility determinations, to which the Board typically defers, but rather inferences and interpretations of record facts, which do not bind us at all.

First, the judge interpreted the suspension letter to be directed primarily towards the loudspeaker incident, apparently because the letter describes that incident in more detail than the convulsing patient situation. However, Garcia did not contest that he left his workstation with the narcotics key, but did deny having said anything derogatory over the loudspeaker. Consequently, the letter not surprisingly recounts both what Garcia's coworkers reported to management and the version of the story related by Garcia at his disciplinary interview. While the suspension letter devotes more words to Garcia's broadcast over the loudspeaker, nothing in it suggests that the hospital deemed the broadcast, and not the abandonment of his workstation, to be the basis for the suspension.[9]

Second, the judge and my colleagues rely on isolated portions of Lacot's testimony to conclude that the hospital viewed the convulsing patient incident as a "minor offense." During the course of her testimony, Lacot testified that Garcia had been counseled on numerous occasions about various violations. At one point, she was asked if she could recall any minor offenses, and she responded, through an interpreter: "It could be one of talking too much, about gossiping. It could be problems with the narcotics key." From this, the judge inferred that the hospital did not consider the delay in responding to the seizure patient significant. That snippet of Lacot's testimony, however, does not support the weight the judge places on it. Apart from the fact that it does not reference the "problems" to which Lacot was referring, as my colleagues acknowledge, Lacot made clear elsewhere in her testimony that the hospital considered any conduct that placed a patient's health in jeopardy to be a "serious offense"—and there is no dispute that Garcia's conduct did just that. Moreover, the hospital certainly acted as if the offense was serious because it promptly investigated the incident and suspended Garcia for it. The judge identified no similar misconduct that had ever gone unpunished.[10]

[7] For a complete explication of *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), and my views on the burdens in *Wright Line*, see *Shearer's Foods*, 340 NLRB 1093, 1094 at fn. 4 (2003).

[8] The suspension letter identified the specific loudspeaker remarks that Garcia's coworkers reported to management, and indicated that those remarks were discussed with Garcia, who denied he had made them. My colleagues therefore err in asserting that Garcia was not provided an opportunity to explain his version of the events. They also err in asserting that the record does not substantiate that coworkers complained to management about Garcia's behavior—the suspension letter obviously does so, as does nurse Cedeno's written complaint, which references Garcia's attitude towards his coworkers. Neither nurse Cedeno, nor nurse Reyes were asked by the General Counsel if they denied making the reports attributed to them by management in the suspension letter; thus there is no evidence contradicting management's receipt of the reports. Even the judge accepted that Garcia likely made inappropriate comments, which he justified as an understandable "brief outburst by a worker on a shift that was short-staffed who felt frustrated at the quality of work and the lack of assistance," conduct the judge determined did not warrant a suspension.

[9] The judge relied on language in the suspension letter stating that "Once again we have to intervene with you due to your attitude and for disrupting the peace and the work that is being done at the Emergency Room" in support of his utterly speculative contention that the Respondent principally relied on the loudspeaker incident to justify Garcia's suspension. Sifting through the language of the suspension letter like an amateur cryptographer, the judge places far too much weight on inferences drawn from inexact translations, problems with which appeared throughout the hearing, as the record amply reflects. Indeed, the written complaint filed by Nurse Cedeno, which the judge found made no reference whatsoever to the loudspeaker incident, states that Garcia needs to "assume another *attitude* towards his fellow workers and the patients." (emphasis added). I do not understand how the judge can insist that Nurse Cedeno's use of the word "attitude" relates solely to the narcotics key incident, while the Hospital's use of the same word in the suspension letter relates primarily to Garcia's comments over the loudspeaker.

The entire analysis of whether the loudspeaker incident standing alone constituted a "disturbance of the peace" sufficient to warrant a suspension strikes me as an unnecessary exercise in speculation that improperly interjects the Board into disciplinary decision-making.

[10] My colleagues are quick to credit Garcia's testimony in virtually every other respect, but ignore the fact that in addition to the reference in the suspension letter to the narcotics key incident, Garcia admitted in his testimony that Lacot told him that the basis for his suspension was having placed the emergency room at risk by his actions, and for his offensive remarks over the loudspeaker. In finding that this concededly life-threatening misconduct played no role in his discipline, they rely instead on Lacot's one word response to the following question:

> Q. is it not true that Mr. Garcia has never been disciplined for having the narcotics key out of the work area?

Finally, the majority contends that the fact that the Respondent did not discipline other nurses who left the emergency room with the narcotics key supports its finding that the Respondent viewed the convulsing patient incident as a minor offense. Other than Garcia's self-serving testimony that nurse Fajardo previously had left the emergency room while in possession of the narcotics key, the majority provides no support for this assertion. Indeed, it is telling that the judge referred to this testimony but made no credibility finding with respect to it. Further, nurse Cedeno's testimony does not in any way suggest that she may have left the department while in possession of the narcotics key.[11] Nurse Cedeno testified that she was assigned to the emergency room triage area and was attending to the convulsing patient when Garcia could not be found. She was asked the following series of questions:

> Q. But, you were assigned to triage, where the patient first goes?
> A. Yes, I came to help.
> Q. And while this is going on Mr. Garcia, the duties assigned to him such as taking the laboratory's [sic] up to the laboratory correct, do you have them taken to the laboratory to be process [sic], isn't that correct?
> A. Yes, take them to the laboratory in order for them to be processed.
> Q. And you have done that before haven't you?
> A. It has been done, but one turns around very quickly. Not a prolonged amount of time to do it, in which you leave your work area by it's [sic] self.

Thus, the question to which Ms. Cedeno testified "It has been done," was not whether she had left her workstation with the narcotics key, but rather whether she had left her workstation to deliver samples to the laboratory. Moreover, Nurse Cedeno specifically denied that anyone had ever needed to look for her away from the emergency room while she was in charge of the narcotics key, and specifically denied knowledge of any other instance during the 3 years she had worked at the hospital in which a person, other than Garcia, had to be tracked down outside the emergency room while in charge of the narcotics key. As to how to conduct oneself while in charge of the key, Nurse Cedeno testified:

> At all times when you have the key to the narcotics, you have to let everybody know where you are, if you go to the bathroom you have to let the rest of your coworkers know that you went to the bathroom, so that if there is an emergency they will know where to locate you. We are working in an emergency room, which said it all [sic], emergencies, which can occur in a minute or less than a minute.

Nurse Cedeno's testimony not only does not support the judge's finding, it directly contradicts it.

The record also does not show that Nurse Reyes had left the emergency room while in charge of the narcotics key. The judge's characterization of Nurse Reyes' testimony on this issue is inaccurate.

Nurse Reyes testified as follows:

> Q. In a given number [sic] have you been in charge of the narcotics key?
> A. Yes.
> Q. What are you supposed to do by having [sic] the narcotics key?
> A. I remain in the area and if I am going to go out of the area, away from the counter. And I am going to be absent from the area for a pretty reasonable amount of time, I hand the key to another register nurse, because in the emergency room at any moment a patient can come in convulsing or with any other condition and narcotics may be needed.

Thus, Nurse Reyes never testified that he had left the emergency room with the narcotics key. In fact, he specifically states later in his testimony that it takes time to transport samples to the laboratory, each of which has to be separately logged in with the laboratory technicians. According

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. . .
A. For having the key? No.

Given the double negatives in the question, the answer "no" would appear to mean Garcia had been disciplined (i.e. "no, it is not true that Garcia has never been disciplined"). In any event, that ambiguous single response does not negate the other record evidence demonstrating that the Respondent promptly investigated and responded to the reported narcotics key incident and disciplined Garcia for it.

My colleagues also state that Lacot's testimony that she included Garcia's alleged abandonment of work on October 6, 2001 in his termination letter as a recent example of his misconduct, but did not rely on this incident in terminating him supports their finding that Lacot never disciplined Garcia for the narcotics key incident, even though the incident was referenced in his suspension letter. That assertion is belied by Garcia's own admission that he was told by Lacot that he was being suspended for the narcotics key incident and for his offensive remarks over the loudspeaker.

The majority also goes into considerable detail in explaining why Garcia's prior instances of misconduct cited in the suspension letter further support a finding that the suspension was unlawful. It is unclear how, on the one hand, my colleagues can find that Respondent did not assert that the narcotics key incident, cited in the suspension's letter, was part of its decision to suspend Garcia, yet on the other hand, place great weight on the letter's reference to these prior instances of misconduct.

[11] The judge stated that Nurse Cedeno "conceded" that she had engaged in conduct similar to Garcia's.

to Nurse Reyes' testimony, it would be improper to be away from one's work area with the narcotics key for "more than one minute,"[12] and for that reason "if I have the narcotics key, I leave the key with a register [sic] nurse if I am going to go out to take samples to the laboratory." Nurse Reyes also testified, as did Nurse Cedeno, that the incident on April 23 was the only time he was aware of that an emergency room patient could not be medicated because a nurse had left the unit with the narcotics key.[13]

The testimony of neither Nurse Cedeno nor Nurse Reyes supports the judge's factual findings. Nor does the isolated excerpt from Ms. Lacot's testimony or the wording of the suspension letter establish that the hospital viewed the seizure incident as trivial. To the contrary, both the testimony of the witnesses and the hospital's behavior reflect, consistent with common sense, that the hospital considered Garcia's conduct, which jeopardized the health of a patient, to be a very serious matter and suspended him for it.[14] There is no evidence of any similarly situated nurse who received greater leniency. While I recognize that Respondent took other disciplinary action against Garcia because of his protected activities, that does not render every incident of discipline a violation of the law. As to this particular discipline, for this particular conduct, I believe that the Respondent has carried its burden of establishing that it would have taken the same action against Garcia regardless of his protected activities. I would dismiss this complaint allegation.

Dated, Washington, D.C. July 31, 2006

Peter C. Schaumber, Member

[12] Q. Mr. Reyes, when talking about the narcotics key, you mentioned that if a person has to leave the area for a reasonable time, it [sic] should notify another person. A. That is true. Q. What would you say is reasonable—strike that—how much would you say that a reasonable [sic] is? A. More than one minute.

[13] Cedeno and Reyes specifically denied that they had left the emergency room while in possession of the narcotics key, and the judge did not discredit that testimony.

[14] My colleagues say that Garcia had been confronted with a "Hobson's choice," when he left the emergency room with the narcotics key. Like the judge, they simply assume that there was no one else available in the entire hospital who could have taken the blood samples to the laboratory, and therefore blame management for the incident. However, even if management was at fault for confronting Garcia with a "Hobson's choice," the fact that the Respondent disciplined him for choosing a Hobson's alternative it viewed as creating a greater risk, does not render the discipline unlawful. The Board's role is not to assess the wisdom or appropriate severity of disciplinary actions. Our sole role is to determine whether the discipline was imposed for the misconduct—leaving the emergency room with the only key to the narcotics cabinet and airing frustrations over a public address system—or for protected concerted activity. Here, the General Counsel has not proved the latter.

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT coercively question you about your union support or activities.

WE WILL NOT threaten you with loss of promotional opportunity or with disciplinary action because of your union support or activities.

WE WILL NOT suspend or discharge you because of your union support or activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the National Labor Relations Act.

WE WILL, within 14 days from the date of the Board's Order, offer Carlos Garcia full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Carlos Garcia whole for any loss of earnings and other benefits resulting from his suspension and discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful suspension and discharge of Carlos Garcia, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the suspension and discharge will not be used against him in any way.

HOSPITAL CRISTO REDENTOR, INC

Vanessa Garcia, Esq., and *José Ortiz, Esq.*, for the General Counsel.
José Oliveras González, Esq., of Rio Piedras, Puerto Rico, for the Respondent.
Harold Hopkins, Jr., Esq., of San Juan, Puerto Rico, for the Charging Party.

DECISION

STATEMENT OF THE CASE

PAUL BUXBAUM, Administrative Law Judge. This case was tried in San Juan, Puerto Rico, on September 30 and October 1–4, 2001. The charge was filed October 22, 2001, and the complaint was issued May 20, 2002.[1]

The complaint alleges that the Hospital, through a supervisor, interrogated an employee, Carlos Garcia, about his union membership, activities, and sympathies, and threatened him with reprisals because of his union activities and sympathies. The complaint further alleges that the Hospital suspended Garcia from his employment for 10 days and ultimately discharged him. The Hospital is alleged to have taken these measures because Garcia engaged in union activities and with the purpose of discouraging other employees from engaging in these activities. The Hospital's conduct is asserted to be in violation of Section 8(a)(1) and (3) of the Act. The Hospital filed an answer denying the material allegations of the complaint and raising certain defenses.

On the entire record,[2] including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, the Charging Party,[3] and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, operates a hospital providing medical, surgical, and related health care services at its facility in Guayama, Puerto Rico, where it annually derives gross revenues there from in excess of $250,000 and annually purchases and receives at its Guayama, Puerto Rico facility equipment, goods, and materials valued in excess of $50,000 directly from suppliers outside the Commonwealth of Puerto Rico. I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and a healthcare institution within the meaning of Section 2(14) of the Act. The Charging Party is a labor organization within the meaning of Section 2(5) of the Act.[4]

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Facts

Guayama is a town located in the Southeastern quadrant of Puerto Rico. Hospital services to its residents had been provided by the Health Department at a facility known variously as the Guayama Area Hospital or the Dr. Alejandro Buitrago Hospital. In a process of privatization, on June 16, 1998, the hospital was purchased by a corporation, Hospital Cristo Redentor, Inc.[5] Among employees who were retained by the new ownership were two who figure prominently in this case. Ivette Lacot Ramos[6] had been the director of human resources since November 1995. She retained this position under the new management. Carlos Garcia Santiago began working as a registered nurse in the emergency room of the Guayama Area Hospital in February 1995. He also continued in his prior position under the new regime.

After the purchase of the Hospital, the new management provided a reorientation process to inform its employees about the Hospital's procedures. Several months later, in October 1998, the Hospital implemented a Conduct and Disciplinary Measures Manual. (GC Exh. 5.) The manual provides that a variety of disciplinary measures may be employed by the human resource department to correct employee misconduct. Measures specifically authorized are verbal warnings, written reprimands, employment and salary suspensions, and dismissals or terminations. A detailed grid is set forth cataloguing the types of infractions and providing a range of sanctions for first, second, and third offenses. In addition to the enumerated offenses, any improper employee action contrary to safety, order, morale, or mutual respect is made subject to sanction as determined by the Hospital's executive director. Testimony established that in addition to the formal disciplinary process described in the manual, lower-level supervisors could impose informal discipline. In practice, use of the formal grid described in the manual is reserved for situations where correction

[1] The Union filed a variety of other charges against the Hospital. The docket numbers of these charges are 24–CA–8303, 8459, 8478, 8480, 8607, and 8879. These charges were ultimately embodied in the General Counsel's fourth consolidated amended complaint filed August 30, 2002. (GC Exh. 1bbb.) The parties achieved a negotiated settlement of all of the issues arising from these charges. (I have appended the parties' settlement agreement to the record as J. Exh. 5.) In light of the settlement agreement, at the commencement of this trial, counsel for the General Counsel withdrew the fourth consolidated amended complaint. (Tr. 6–7.) Remaining for adjudication are the allegations set forth in the order consolidating cases, complaint and notice of hearing filed on May 20, 2002. (GC Exh. 1vv.)

[2] The record as prepared by the Reporter contains an error. A copy of a photograph is included in the record as Respondent's Exhibit 1. Actually, I denied counsel for the Respondent's motion to admit this exhibit and ordered that it be placed in a rejected exhibit file. (Tr. 145–146.) As a result, I have removed this photograph from the record and placed it in a rejected exhibit file. I have not considered any personal observation of the contents of the photograph as part of the evidence in this case.

[3] Counsel for the Union requests permission to submit an amendment to the Union's brief, adding an omitted footnote. The request is unopposed and I grant it.

[4] These jurisdictional findings and conclusions are not in dispute. See: Answer to the fourth amended complaint of May 20, 2002. (GC Exh. 1xx.)

[5] All parties' pleadings refer to the corporation by this name; however, I note that the Hospital's letterhead refers to the corporation as Hospital Episcopal Cristo Redentor, Inc. (See for example C.P. Exh. 3a.) This translates as Episcopal Hospital of Christ the Redeemer, Inc.

[6] I have followed Spanish Language usage in initially describing each individual's names by including the maternal surname. After the initial reference, I will name each person by reference to his or her paternal surname. Thus, Ivette Lacot Ramos will hereafter be referred to as Lacot.

of misconduct by imposition of informal discipline has already been attempted.

During the transitional period after privatization, the Hospital's employees were organized by the Unidad Laboral de Enfermeras(os) y Empleados de la Salud.[7] Subsequent to an election, on August 25, 1998, the Board certified the Union as collective-bargaining representative of, among others, all registered nurses employed by the Employer at its hospital in Guayama, Puerto Rico. (J. Exh. 1.)[8] In November 1998, the parties began the process of collective bargaining. Once agreement on noneconomic terms was reached, negotiations regarding economic issues began. This occurred in January 1999.

Also in January 1999, Garcia became the union delegate for the approximately 20 to 24 employees in the emergency room. These employees were under the supervision of Osvaldo Rivera David. Upon his selection as delegate, Garcia and another union official met with Rivera and notified him of Garcia's new position with the Union. Garcia testified that, as of that time, he had a good relationship with Rivera, and had never received any written discipline from him.[9] He also testified that his relationship with his supervisor started to deteriorate "[t]owards February of '99." (Tr. 63.) There is documentary evidence to support this assertion. On February 2, 1999, Rivera gave Garcia a formal "Exhortation to Improve Conduct or Attitude." (GC Exh. 2b.) This urged Garcia to maintain a positive attitude toward his coworkers and to avoid "comments or negative criticism" and "negative situations." It also informed Garcia that Rivera would be observing him to assure that he avoided this type of behavior. At trial, when Rivera was asked to explain the attitude problems alluded to in the Exhortation, he described a variety of comments made by Garcia to his coworkers. Some of these would fall within the rubric of gossip. Other comments that Rivera characterized as reflective of Garcia's attitude problems involved criticisms of the Hospital's management and programs.

Less than 3 months later, on April 27, 1999, Rivera gave Garcia a second formal Exhortation. (GC Exh. 3b.) As with the earlier such document, the Exhortation is notable for its vagueness. It begins by observing that Rivera had noticed an "improvement" in Garcia's behavior since their February 2 interview. Nevertheless, Rivera reported that "incidents related to comments or attitudes" continued to occur during work shifts. Garcia was "urged" to avoid "that type of personal attitude or activity." He was warned that if his behavior pattern continued, he would be referred to the human resource department. Such a referral would be a serious matter, as it would invoke the disciplinary provisions of the Conduct and Disciplinary Measures Manual. Garcia wrote a comment on the Exhortation form noting that he did not totally agree with Rivera's assessment, but would "make an effort."

While Rivera and Garcia were having these difficulties, the Hospital and Union's bargaining relationship was also experiencing problems. The Hospital's offer regarding economic issues did not include provision for any raises in compensation during the first 2 years of a collective-bargaining agreement and contemplated only a possibility of a bonus during the third year. On April 29, 1999, the Union filed an unfair labor practice charge alleging that the Hospital was bargaining in bad faith.[10] (GC 1a.)

In August 1999, Rivera gave Garcia a written warning (described by the parties as an "anecdotal") regarding absences from work without prior notification.[11] Two days later, Lacot spoke to Garcia about this subject. Garcia denied that the absences were unauthorized.

In October, the Union filed four new charges alleging a variety of unfair labor practices involving bargaining violations, unilateral management actions, and threats made to a union official. (GC Exhs. 1c, 1k, 1e, and 1i.) On October 29, the General Counsel filed a complaint and notice of hearing as to these allegations. (GC Exh. 1h.) An amended complaint followed in January 2000. (GC Exh. 1q.) The Union filed amended charges in February. (GC Exhs. 1r and 1t.) At the end of the month, the General Counsel filed a second amended complaint. (GC Exh. 1x.) This was followed by the Union's filing of another amended charge in March. (GC Exh. 1eee.)

On April 5, 2000, Rivera issued another "anecdotal" to Garcia, regarding a breach of confidentiality rules.[12] Two weeks later, the Union filed yet another charge alleging bargaining violations. (GC Exh. 1aa.) At this juncture, the tempo of disciplinary measures against Garcia escalated. On June 14, Rivera gave him another "anecdotal" concerning what counsel for the Hospital described as "some problem—adding to problems toward the work or towards the job." (Tr. 129.)[13] On July 7, Lacot met with Garcia concerning allegations that he was making negative comments about the Hospital and talking about the Union in the presence of patients and their families. He was given a warning. Garcia responded by telling Lacot that Rivera was using favoritism in supervising the emergency room. He also complained that Rivera would not let him articulate his own version of events prior to imposing discipline.

On July 24, the Union filed an unfair labor practice charge concerning the Hospital's no-solicitation rule. (GC Exh. 1dd.) Three days later, Lacot wrote a warning letter to Garcia. As this letter contains a more elaborate statement of the Hospital's position, it bears quotation in some detail:

> Your problem consists in discussing and making comments about the Institution['s] matters, your department and your fellow workers in front of patients and visitors. These remarks concern the work shifts, the days off, the apparent favoritism of the Supervisor toward some of

[7] The Union's name translates as Labor Union of Nurses and Health Care Employees.

[8] The parties submitted a number of joint exhibits. These will be referred to with the letter "J."

[9] Under cross-examination, Rivera essentially confirmed this. He was also unable to recall having given Garcia any verbal discipline prior to February 1999.

[10] I express no opinion as to the merits of this charge. This and other portions of the litigation history between the Hospital and the Union are referenced solely to provide background and context for assessment of the limited issues presented in this trial.

[11] A copy of this document was not submitted into evidence.

[12] A copy of this document was not submitted into evidence.

[13] Once again, this document was not placed in evidence.

> your coworkers, tasks incorrectly carried out, and the lack of compliance [to] duties of your coworkers.
>
> . . . You frequently act as a 'leader' of the group and you do not report the situation that arises with your coworkers and express it openly, where there are other persons, when it is important that you meet with your supervisor and share with him these situations.
>
> We informed you that we never doubted your competence as a professional but that you had to improve your attitude because this situation prevented you from developing as a professional.

(J. Exh. 2b.) Lacot's letter goes on to inform Garcia that his behavior violates the confidentiality and disorderly conduct sections of the Conduct and Disciplinary Measures Manual.

Three days later, the Union filed another charge alleging bargaining violations. (GC Exh. 1ff.) On the same date, the General Counsel filed its second amended consolidated complaint, incorporating a variety of charges involving asserted violations of Section 8(a)(1) and (5) of the Act. (GC Exh. 1hh.). The next 6 months were uneventful. However, on February 3, 2001, Rivera issued another written anecdotal warning to Garcia for behavior that he testified involved turning over a shift too early and manipulating a patient's discharge process.[14]

Shortly thereafter, on February 27, 2001, Garcia's involvement with the Union became more visible as he attended a collective-bargaining session for the first time. Lacot testified that this was when she first realized that Garcia was a union delegate.

Two weeks later, Rivera issued another written anecdotal warning to Garcia concerning an incident involving a patient's medication.[15] The patient was under the care of another nurse who was in training. As that nurse was working with Garcia, he bore ultimate responsibility. The patient had been prescribed an intravenous medication, Versed. This should have been administered at the rate of 5 cc's per hour. Apparently, it was actually administered at the rate of 100 cc's per hour. The patient's medication chart showed the rate of administration of the Versed as 100 cc's. Garcia subsequently wrote over this notation a rate of administration of 5 cc's per hour.[16] The Hospital called the patient's physician, José Anglero Ramos, M.D., to explain the significance of Rivera's conduct. He testified that the patient's record showed "some alterations in the dosifications." (Tr. 230.) The doctor testified that these alterations should have been noted and initialed by their author.[17]

Two days after writing his disciplinary report regarding this error in medical record documentation, Rivera met with Garcia to orient him concerning the correct protocol for making changes in patients' medical records. Rivera testified that since this orientation, Garcia has not made any errors in this regard.

Approximately a week later, on March 21, 2001, Rivera issued another written anecdotal warning to Garcia for an attitude problem.[18] On March 29, a meeting was convened to address both the medication documentation error and the attitude problem referenced by Rivera. In addition to Rivera and Garcia, the meeting was attended by a number of management representatives, including Lacot, Niurka Vélez, a general supervisor, and Jovita Carrasquillo Guzmán, the nursing services director. Various union representatives also attended this meeting. After the meeting concluded, Lacot requested that another meeting regarding Garcia be held on the same day. Garcia, Lacot, Carrasquillo, and a union representative attended this second meeting. The subject of the second meeting was Garcia's alleged possession of sexually inappropriate materials on Hospital premises, including a photograph of him. Garcia was shown the photograph and printed materials. He denied any knowledge of the printed materials, but agreed that the photograph depicted him and had been taken at an employee Christmas party held after work hours and at a location away from the Hospital. He denied ownership of the photo and denied having brought the photo to the Hospital.

As discussed earlier (in fn. 2), I declined to admit a copy of the photograph due to lack of an evidentiary foundation for admission. In any event, admission of the photo is not necessary since both Garcia and Lacot were in agreement as to what it depicted. Garcia testified that it showed his left side in a rear view and that his underpants were visible, but his buttocks were not. Lacot described it as a photo "in which Mr. Garcia displayed his underwear." (Tr. 510.)

Although the presentation of the photograph to Garcia was the subject of a meeting attended by various persons, Lacot testified that she took no other action regarding the photo since "we understood that that had to do with his personal life." (Tr. 510.) Actually, Lacot did take additional action against Garcia regarding the photo. On April 11, 2001, she addressed a document to Garcia entitled a "FORMAL ADMONISHMENT." (Emphasis in the original.) The letter began by referencing the medication documentation error, noting that Rivera had met with Garcia and given him "appropriate recommendations." Lacot then reported that allegations had been made that Garcia had made comments "such as that you would like that a shooting would take place at the emergency room and that four (4) people would be killed." She noted that Garcia denied having made such remarks. Although the precise disposition of this

[14] As this document was not introduced into evidence, the only information regarding its content comes from Rivera's testimony.

[15] Counsel for the Hospital contends that there were two episodes involving medication errors, one involving a medication known as Isordil and another involving a medication called Versed. (R. Br. at 14–19.) The evidence regarding whether there were one or two such incidents is unclear. Dr. Anglero, the treating physician in both supposed cases, was unable to testify as to the name of the patient or the date of the incident involving Isordil. He also could not identify the medical records regarding this alleged event. Indeed, he testified that he "didn't bother" to examine any records in preparation for his testimony. (Tr. 260.)

[16] Garcia originally denied making the alteration, but subsequently admitted it.

[17] It is apparent from examination of the record in question (R. Exh. 4) that the failure to note and initial the change was not intended to hide the change. I reach this conclusion since the emendation is simply written over the original note and does not conceal its existence.

[18] As this anecdotal warning was not admitted into evidence, it is impossible to determine the nature of this attitude problem.

serious allegation is not made clear in her letter, Lacot did "formally admonish" Garcia for "your ill-intentioned comments and inappropriate attitudes in your work area."[19] (R. Exh. 2b.)

After addressing Garcia's alleged comments and attitudes, Lacot went on to provide a detailed description of the meeting regarding the sexual materials and photograph. Although agreeing that no action would be taken against him regarding these items since they "had no bearing with your work responsibility," she nevertheless informed Garcia that this conduct was "unacceptable and that this situation must not be repeated." I note that this formal warning was reduced to writing and placed in Garcia's personnel file. The document included a detailed description of the alleged misconduct regarding the sexually explicit materials and the photo. It certainly constituted an adverse action. As such, Lacot's decision to include this discussion in the document directly contradicts her trial testimony that she took no further action as to this matter since it only involved Garcia's personal life.[20]

Lacot's letter of April 11 also contains significant remarks regarding issues involved in this case. Lacot noted that Garcia had reiterated that he was:

> feeling persecuted because you were a Union Shop Steward and we informed you that we were not in agreement with that belief. . . .
>
> We emphasize that the fact of being a Delegate of ULEES did not exempt you from complying with the Institution's rules and procedures and if we had to intervene with you due to lack of discipline, the pertinent procedure would be carried out.

(R. Exh. 2b.) Finally, I note that this letter is consistent with earlier disciplinary measures in citing alleged specific incidents but placing greatest emphasis on asserted attitude problems. Indeed, Lacot goes so far as to state that:

> We remind you that on several occasions we have pointed out to you that you are complying with your work, but that your attitudes are affecting you. . . .
>
> We request you to improve your attitude to maintain order and peace in the processes of your department and the Institution.

(R. Exh. 2b.)

Shortly thereafter, management took a more serious disciplinary action against Garcia. Once again, this arose in the context of a specific episode of asserted misconduct but actually focused more on a general contention that Garcia had an attitude problem. The specific episode occurred on April 23. On that date, only four nurses, three fewer than normal, staffed the emergency room. Garcia was the shift leader. In this position, he was in charge of the key to the secure cabinet that contained the narcotic medications. As the only person authorized to dispense narcotics during the shift, Garcia was expected to remain in the emergency room. Garcia testified that this posed great difficulties due to the need to transport patient samples to the lab for analysis. An escort usually performed this task. Unfortunately, on this date the escort was on leave. The other nurses were performing direct patient care duties that required their presence in the emergency room. As a result, Garcia testified that he decided to take the samples to the lab, a decision that took him away from the narcotics cabinet for a number of minutes. While Garcia was away, a patient experienced a convulsion. Her physician prescribed Valium, a narcotic medication. During the time that Garcia was away, the medication could not be obtained from the locked cabinet. An identical incident occurred later in the shift when the patient again convulsed. Garcia had made a second trip to deliver laboratory samples and his absence resulted in a delay in obtaining Valium from the locked cabinet. As a result of these events, a nurse, Marian Cedeño Torres, drafted a written complaint regarding Garcia's failure to remain available with the narcotics key. Her letter acknowledged that Garcia had been in the laboratory on each occasion. (R. Exh. 3b.)

There was considerable conflicting testimony regarding the significance of this incident. Garcia testified that he had never before left the emergency room when in charge of the narcotics key. His decision to do so on this day was the result of his perception that the lack of available staff required him to undertake the delivery duty so that patient's samples could be analyzed without undue delay. He also testified that other nurses had engaged in similar conduct. Indeed, he reported that he had complained to Rivera twice about nurses taking the narcotic key with them to the cafeteria. Interestingly, Nurse Cedeño conceded that she had taken samples to the lab under similar circumstances. She noted that when this happens, "one turns around very quickly." (Tr. 349.) One of the other nurses on duty that day, Antonio Reyes Pillot, also testified that he had left the emergency room while in charge of the narcotics key. However, he reported that if he has had to leave "for a pretty reasonable amount of time," he gives the narcotics key to another nurse. (Tr. 364.) The record does not reveal whether the shift leader is authorized to transfer possession of the narcotics key. In any event, during her testimony, Lacot was asked to describe minor offenses committed by Garcia. In response, she said:

> It could be one of talking too much, about gossiping. It could be problems with the narcotics key.

(Tr. 627.) Although the potential consequences to the patient could have been severe, it is unclear whether the cause of the situation was Garcia's decision to take samples to the lab while in possession of the key or the lack of the usual complement of staff in the emergency room. Lacot's characterization of this

[19] At trial, the Hospital presented no evidence regarding these alleged remarks about a shooting. As a result, apart from the general issue of whether the remarks were actually made, I cannot determine if any patient or family member was alleged to have heard such remarks. There is also nothing in the record to indicate whether such remarks are alleged to have been made with serious intent or in jest.

[20] In fact, Lacot returned to this theme in another disciplinary letter written on May 11, 2001. While imposing a suspension, she observed that on a prior occasion "we gave you some copies of reading material of a sexual content and your photograph in a pose of bad taste." Disingenuously, she opined that "[w]e did not take disciplinary action about this; we only advised you that this situation should not be repeated." (J. Exh. 3b.)

incident as involving only "minor" misconduct suggests recognition of this reality.

After this episode, a disciplinary meeting was convened. Garcia was present with Rivera, Lacot, and a union representative. Lacot informed Garcia that two employees had complained in writing about his conduct regarding the narcotics key.[21] She informed Garcia that he was being sanctioned with a 10-day suspension. She provided him with a written statement of the reasons for this discipline. As in other such instances, this is a curiously worded document. It begins by describing the April 23 incident as "improper conduct toward your coworkers in front of patients and relatives." Lacot then provides a description of the narcotics key episodes. Oddly, this description states that Garcia "alleged" that he was in the laboratory. (J. Exh. 3b.) I find it troubling that Lacot never indicates that this "allegation" was uncontroverted. In fact, Cedeño's letter of complaint regarding Garcia's conduct clearly states that, on each occasion, Garcia was located in the laboratory area. Thus, I conclude that Lacot's choice of wording reflects an intention to improperly magnify the seriousness of Garcia's absences from the emergency room.

After discussing the narcotics key episodes, the letter shifts to a report indicating that later during the shift, Garcia had taken the loudspeaker and complained that he was the only person working and that nobody was helping him. This comment was heard by patients and "bothered your coworkers, thereby disrupting the normal operations of the Department and the Institution." (J. Exh. 3b.) Lacot's letter notes that Garcia denied making such comments. Although the Hospital called Cedeño and Reyes as witnesses, no testimony was elicited regarding any remarks made by Garcia over the loudspeaker.

Lacot's letter indicates that the disciplinary suspension was being imposed for the asserted conduct over the loudspeaker, not for any supposed impropriety regarding the narcotics key. Specifically, the suspension is imposed "due to your attitude and for disrupting the peace and the work that is being done at the emergency room." (J. Exh. 3b.) Lacot's letter concludes with a warning that "engaging in negative conduct again in the future" would be cause for Garcia's termination. (J. Exh. 3b.)

Several months later, the Union planned a protest activity. Garcia described this as a "vigil" planned for August 6, 2001. (Tr. 94.) On the day before the planned protest, Garcia was transporting a patient for X-rays. Garcia was in the company of Ausberto Felix Ortiz, the general supervisor of nursing services. Garcia testified that Felix asked him if he was going to participate in the protest scheduled for the following day. Garcia indicated that he would participate. Felix told him that this was the reason he would never become a supervisor and why he was "always in trouble." (Tr. 94.) Garcia testified that, after a pause in their discussion, Felix asked him if he "belonged [to] the satanic sects of Mr. Radamés Quiñones." Quiñones is the president of the Union. Garcia responded by observing that he was a union member. Felix testified that no such conversation occurred.

[21] The record contains only one written complaint, that of Nurse Cedeño.

Garcia did participate in the union's protest on August 6. He also testified that he was involved in planning a work stoppage that was scheduled for September but actually took place in October. He characterized his role by noting that,

> I organized all my co-workers from the emergency room so that they would participate in the work stoppage.

[Tr. 95.]

In September, another disciplinary meeting was convened regarding Garcia's conduct. In addition to Garcia, Rivera, and Lacot, Ingrid Vega Mendez attended as union representative. The meeting concerned a written allegation by a patient, accusing Garcia of having been disrespectful to her on a specified date. Garcia contended that he was not on duty at the Hospital on the day in question. Vega demanded that the attendance records be produced. These revealed that Garcia was not at the Hospital on the relevant date. As a result, the meeting was terminated.

After the meeting, Vega and Lacot had a conversation. Vega testified that Lacot told her that she had prepared Garcia's dismissal letter. In light of the result of the meeting, Lacot ripped up the letter. Vega also said that Lacot told her that Garcia was a "gossipy person" who "intervened in matters that were really none of his business." (Tr. 50.) Vega testified that Lacot told her that:

> those attitudes of Mr. Garcia's at the [H]ospital could not be tolerated by the Hospital, and that that could bring about his dismissal, and, even more so, when he was the delegate.

[Tr. 52]

Lacot also testified regarding some of these events. She accused Vega of "lying" about the ripping up of a dismissal letter. (Tr. 483.) She denied possessing any such letter and denied ripping up any letter in Vega's presence. On cross-examination by counsel for the Union, she testified that on another occasion she had ripped up a disciplinary letter about a different employee in the presence of counsel for the Union. Significantly, Lacot did not deny making the statements described by Vega concerning her opinions about Garcia's behavior and the possible disciplinary consequences.

The next important event involving Garcia took place on October 6. On that occasion, Garcia had driven his sister's auto to work. His sister resided alone with her two daughters in an isolated area in the countryside. One of the daughters has a chronic medical condition that can cause episodes of inflammation of the trachea resulting in difficulty in breathing. When this happens, treatment by injection is required. Garcia reported that his sister does not know how to administer this injection. Garcia testified that while he was at work, he was notified that his niece was experiencing such difficulties. Nurse Cedeño testified that he told her that he had "an emergency at my sister's house." (Tr. 341.) Garcia gave Cedeño the narcotics key and headed toward the supervisor's office. Cedeno opined that she imagined his purpose was "to ask permission from the supervisor to go out." (Tr. 341.) Garcia spoke with Regina Santiago, the general supervisor. He testified that his purpose was to "ask for permission to go to my sister's house to

see my niece's status." (Tr. 97.) Santiago asked Garcia to complete the authorization form that was utilized by the Hospital as documentation of such requests. Santiago testified that Garcia was nervous, anxious, desperate, and crying. As she was unable to readily locate the authorization form, she asked him to use a blank piece of paper. He scrawled a brief note referring to a "personal matter." (GC Exh. 4b.)

Although the note is relatively incoherent, there is no doubt that Garcia's supervisor understood that he was seeking permission to leave the Hospital to attend to a personal emergency. Counsel for the Union engaged in the following discussion with Santiago:

> Q. And you took that [piece of paper prepared by Garcia] in place of the official form and he was authorized to leave?
>
> A. Yes, he signed the paper and he left . . .
>
> Q. And then Carlos Garcia left after he signed the paper and handed it to you, isn't that correct?
>
> A. Yes.
>
> Q. At no moment did you tell Mr. Garcia that he couldn't leave, isn't that correct?
>
> A. No, I did not say it to him, and he left. [Tr. 310, 311.)]

Garcia proceeded to drive to his sister's home and ascertain that his niece's condition was not serious. He returned to the Hospital after an absence of approximately 80 minutes. Garcia testified that he had soiled his shoes in the mud around his sister's house. Upon his return, he removed his shoes. He met with Santiago, who noticed that he was wearing only dirty socks. She procured some shoe covers for him to wear over his socks. As a result of this incident, Rivera issued a written anecdotal warning.[22] A meeting to discuss the incident was held on October 9. Garcia was informed that it was being referred to the human resources department. Before management took any further action, a final incident occurred.

On October 18, while Garcia was on duty, paramedics delivered a girl to the emergency room. Garcia spoke to the child's mother who indicated that the child had taken five Panadol PM tablets and had fainted at school. The parent asked Garcia about the medical procedures that would be applied to her daughter. Garcia described those procedures, including the protocol involving psychiatric hospitalization that is employed in cases of attempted suicide.

Approximately 45 minutes after his conversation with the child's mother, Garcia was called to a meeting with Rivera, Miriam Sierra, the head nurse, and Dr. Anglero, the child's treating physician. Anglero criticized Garcia for making a medical diagnosis. Specifically, Anglero testified that Garcia's error consisted of discussing the possibility of a suicide attempt with the child's mother. Anglero opined that Garcia had "hurried and [he] did things that were unnecessary—improper." There was no need to raise the issue of psychiatric care because Anglero had determined that the child's situation had resulted from a too rigorous diet rather than a mental health problem. The girl developed a headache from lack of food and took too many tablets in response. This caused her fainting episode. On cross-examination, Anglero conceded that Garcia told him that he had not made any diagnosis and had specifically informed the parent that the physician would make the diagnosis.

During this meeting, Rivera also accused Garcia of having telephoned "911" about the child's condition, thereby unnecessarily involving social services in the child's situation. Rivera told Garcia that such action was not within his purview and was "impertinent." (Tr. 118.) Garcia told Rivera that he had not called "911." He explained that the child's school had called "911" to request an ambulance and, since the school's call involved a minor child, it automatically activated a report to the social services organization. Under cross-examination, Rivera agreed that the school had telephoned "911" about the child's condition.[23]

On the next day, Garcia reported to work. He was told to see Lacot. She informed him that the incident of the preceding day was "the last drop that spilled the cup."[24] (Tr. 123–124.) Garcia was given a dismissal letter. He was not afforded an opportunity to explain his conduct. Lacot testified that the actual decision to dismiss Garcia was made by the executive director of the Hospital, José Cora Izquierdo. Indeed, she testified that Cora makes the final decisions regarding all of the formal employee sanctions, including admonitions and suspensions. He does this after receiving recommendations from other management officials, including Lacot.

Although Cora made the termination decision, Lacot wrote the dismissal letter. The letter makes passing reference to prior disciplinary problems, including the 10-day suspension. It also references the previous day's incident involving the child's overdose of medication. Garcia was accused of having made an unauthorized medical diagnosis. Lacot characterized the nature of this asserted misconduct as "failing to comply with the privacy and confidentiality of the information."[25] (J. Exh. 4b.)

While the dismissal letter makes reference to the past disciplinary history and the most recent incident, it concentrates on an allegation that Garcia "abandoned" his duties on October 6 when he left the emergency room to check on his niece's health. The letter accuses Garcia of having "abandon[ed] your work without previously notifying it [management] and without

[22] Once again, the document was not introduced into evidence.

[23] As in some other instances involving discipline of Garcia, the Hospital's contention that Garcia improperly contacted social services regarding the child's condition is hotly contested. Dr. Anglero testified that he did not have knowledge of whether Garcia telephoned social services. The Hospital did not present any evidence that Garcia did so. I find Garcia's explanation as to how social services became involved to be credible. It is logical that the school's emergency report would trigger this process of child protection.

[24] This is an idiomatic expression roughly equivalent to "the straw that broke the camel's back."

[25] In contrast, during her testimony, Lacot characterized the nature of this asserted misconduct as insubordination. To the extent that the dismissal letter alludes to a confidentiality violation, I assume it refers to the alleged call to "911." I have already found that Garcia's explanation as to who made this call is credible. Since I find that Garcia did not make the call, this cannot serve as a basis for a confidentiality violation.

authorization from the shift supervisor." Lacot's ultimate conclusion as to this conduct is as follows:

> Assuming that what you stated as a reason to abandon your work is true,[26] the conduct incurred by you does not exempt or excuse you from notifying the supervisory personnel before leaving your work.

(J. Exh. 4b.) Garcia has not worked at the Hospital since his termination on October 19, 2001.

On October 22, the Union filed an unfair labor practice charge alleging that the Hospital's treatment of Garcia violated the Act. (GC Exh. 1oo.)

Five days after Garcia's discharge, the Union engaged in a work stoppage. Lacot testified that the Union had given her advance notice of this work stoppage.[27] The work stoppage lasted from October 24–26. Garcia testified that he participated in the job action and that the emergency room employees had the greatest number of participants of any department.

On October 26, Executive Director Cora sent letters to each employee who did not participate in the work stoppage. These letters characterized the employee's conduct as "a demonstration of personal dedication and duty towards the patient." It noted that the nonstriking employees had received "threats, screams, and insults carried out by persons with interests different from that of the patient's welfare." Cora specifically informed the addressees:

> In consideration of this high level of dedication and of professionalism, I am proceeding to file in your personnel file a copy of the present communication as a reminder of your performance.

(C.P. Exh. 3b.)[28] Rivera testified that the letters of commendation were indeed placed in the personnel files of the employees who did not participate in the work stoppage.

B. Analysis

1. The alleged interrogation and threats

The General Counsel alleges that Garcia was improperly interrogated and threatened by a supervisor employed by the Hospital. Specifically, Garcia testified that on August 5, 2001, Felix, the general supervisor of nursing services, asked him if he planned to participate in an upcoming protest sponsored by the Union. When he answered affirmatively, Felix told him that this was why he would never become a supervisor and why he was "always in trouble." Finally, Garcia testified that, after a pause in the conversation, Felix asked him if he belonged to "the satanic sects" of the Union's president. (Tr. 94.)

In sharp contrast to Garcia, Felix testified that he never discussed union matters with Garcia, "[m]uch less" any issue of religious preference. (Tr. 286.) I have carefully considered whether Felix's broad denials can be given credence. In so doing, I find that it is vital to evaluate these denials in the context of the remainder of Felix's testimony regarding his degree of interest in union activities at the Hospital.

On cross-examination, Felix conceded that one of his duties as general supervisor of nursing services is to ensure adequate nursing coverage for the patients. In this connection, he performs follow up to the director of nursing's efforts to provide staffing during picketing.[29] As part of this task, he visits each department of the Hospital to determine that sufficient nursing personnel are available. Somewhat reluctantly, he agreed with counsel for the Union's assertion that he has undertaken the responsibility to make the necessary preparations before each of the Union's strike activities.[30]

Although Felix testified that he carried significant responsibility for providing adequate nursing staff during union picketing, he expressed an almost regal indifference to the union activities of his employees. For example, counsel for the Union asked him if he observed union members picketing. He responded that he was "not in the mind frame of watching pickets or anything like that." (Tr. 288.) Counsel persisted by asking if he had ever observed any picketing at the Hospital and he responded negatively. When counsel pointed out that the pickets are visible directly outside the Hospital, Felix agreed that he has seen the pickets when driving onto the Hospital's property. Despite this, he claimed that he merely "enter[s] with my vehicle and I do not stop or pass by to see who is in the line." (Tr. 289.)

I find this virtually perfect indifference to the union sympathies and activities of Felix's employees to be highly improbable in light of Felix's responsibilities in strike situations. His asserted attitude is certainly at odds with the intense interest in the union sympathies and activities of employees expressed by Felix's ultimate superior, Executive Director Cora. It will be recalled that Cora took the trouble to ensure that every employee's decision as to whether to participate in strike activity was memorialized by documentation in his or her personnel files.[31] It also contrasts with Supervisor Rivera's behavior. Rivera testified that he observed Garcia's participation in several of the Union's demonstrations, including picketing. I find the overall tenor of Felix's testimony to be incredible. Having

[26] Throughout this proceeding, management insinuated that Garcia's reason for leaving the Hospital was something other than he had described. No evidence was presented to support this insinuation. To the contrary, I find Garcia's account to be strongly corroborated by Cedeño's testimony that at the time in question he told her he had to leave the Hospital because he had an emergency at his sister's house. It will be recalled that Cedeño was hardly a friendly witness for Garcia. She had written the formal letter of complaint against him arising from the narcotic key episode.

[27] Section 8(g) of the Act requires that a labor organization that is planning a strike or picketing at a health care institution must provide written notice of such intention to the institution not less than 10 days prior to any such action. Lacot testified that the Union provided advance notice and the Hospital has not contended that the Union failed to provide such notice in timely fashion. This indicates that the notice was provided no later than October 14.

[28] This exhibit is a copy of the letter addressed to a specific employee. All of the letters were identical.

[29] As required by the Act, the Union provides advance notice of such activities to the management of the Hospital.

[30] In response to this question, he stated, "I imagine so." (Tr. 293.) When pressed further, he agreed that "[o]f course, I do." (Tr. 294.)

[31] Cora's letter of commendation was placed in the files of nonstriking employees. Obviously, an employee who had been with the Hospital at the time of the strike and lacked such a letter in his or her file was identified as a striking employee.

"gilded the lily" by claiming no interest in a subject that would have reasonably been of a high degree of interest, I cannot give any credence to his denial of Garcia's account of their conversation about this same subject.[32] By contrast, as I will discuss below, Garcia's account is consistent with the pattern of activity by management in response to Garcia's union activities.

Having found that Felix engaged in the conduct alleged, I must assess its legal significance. The Board does not employ a per se rule in evaluating interrogations of employees about union activities or sympathies. *Norton Healthcare*, 338 NLRB 320, 321 (2002). In its leading case, *Rossmore House*, 269 NLRB 1176 (1984), affd. sub nom. *Hotel Employees, Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985), the Board established a totality of the circumstances test in order to determine whether an interrogation was conducted in a manner that reasonably tended to restrain, coerce, or interfere with an employee's rights under the Act. The factors to be considered include the general background, nature of the questioning, identity and status of the questioner, place and method of interrogation, whether a valid purpose for the questioning was communicated to the employee, and whether the employee was given assurances that there would be no reprisals. *Bourne v. NLRB*, 332 F.2d 47 (2d Cir. 1964). I will examine each of these factors.

The general background and context of the interrogation support a finding of unlawfulness. At the time of the interrogation, the Union was engaged in difficult collective-bargaining negotiations with the Hospital and a variety of unfair labor practice charges were pending resolution. More significantly, Garcia had been given a disciplinary suspension less than 3 months prior to the interrogation. Finally, at the time of the questioning, both Felix and Garcia were well aware that a union protest activity was planned for the next day. For these reasons, the context of the questioning contributed to its coerciveness.

By the same token, the identity of the questioner, the nature of the questions, and the method of interrogation employed all underscore the impropriety of the interrogation.[33] A nursing supervisor directly in Garcia's chain of command asked the questions. Garcia was asked the highly pointed question of whether he planned to participate in the next day's protest. When he responded affirmatively, Felix immediately painted a picture of the dire consequences of his answer—the preclusion of his opportunity to attain a supervisory position and the asserted direct link between Garcia's union activities and his disciplinary problems. Finally, I note that Felix did not convey any valid purpose for the questioning and certainly did not offer any assurance of lack of reprisal. To the contrary, Felix essentially indicated that there had been and would be adverse consequences to Garcia's union activities. It is difficult to imagine a more coercive set of circumstances.[34] I find that Felix's interrogation of Garcia violated Section 8(a)(1) of the Act. It is equally clear that Felix's assertions that Garcia's participation in union activities was the cause of his inability to become a supervisor and the source his disciplinary problems constituted unlawful threats designed to interfere with the rights guaranteed to Garcia under Section 7 of the Act. These statements also violated Section 8(a)(1) of the Act.

2. The alleged discriminatory suspension and discharge of Garcia

The Hospital suspended Garcia on May 11 and discharged him on October 19, 2001. The General Counsel contends that these disciplinary measures were imposed due to Garcia's participation in union activities and that these sanctions were imposed with the intent to discourage such participation by other employees in violation of Section 8(a)(1) and (3) of the Act. In order to evaluate these contentions, I must apply the Board's analytical framework set forth in *Wright Line*.[35] This requires that the General Counsel show that Garcia was engaged in protected activity, that the Hospital was aware of such activity, and that the activity was a substantial or motivating factor for the decisions to suspend and ultimately terminate him. If the General Counsel makes this showing, the burden shifts to the Hospital to demonstrate that it would have taken these same actions against Garcia even in the absence of his protected conduct. I will address each factor in turn.

There is no doubt that Garcia participated in a variety of protected, concerted activities. He testified that, after the Union asked him for his support, he became active in this cause, going to meetings, taking information to his coworkers, providing those coworkers with the Union's newspaper, urging them to support the Union, and participating in two protests and one work stoppage. In January 1999, Garcia was selected as the Union's delegate for the emergency room employees. Vega described Garcia's role as delegate as involving the duty:

> to intervene in any controversy, any dispute, any problem that could arise within his department. And the same had to be discussed with the Hospital's administration . . . .

(Tr. 36.) Vega characterized Garcia's participation in union affairs as "very active." (Tr. 37.) Garcia, himself, reported that he "organized all my coworkers from the emergency room so that they could participate in the work stoppage [in October 2001]." (Tr. 95.) He noted that the emergency room had more participants in the strike than any other department.

The record also clearly establishes that the Hospital's management was thoroughly acquainted with the nature and extent of Garcia's union activities. Upon his selection as union delegate, Garcia and another union functionary met with Rivera to

[32] This conclusion was reinforced by observation of Felix's haughty demeanor on the witness stand.

[33] I find the location of the questioning to be innocuous.

[34] I have not placed great weight on Felix's comment characterizing the Union as a satanic sect. I certainly do not believe that this was any sort of serious theological comment, but was merely intended as a bit of sarcasm. Although I find that this comment was not meant to be taken literally, this does not vitiate the other serious threats made by Felix. The situation is similar to that in *Cox Fire Protection, Inc.*, 308 NLRB 793 (1992), where the Board found that although a supervisor's "colorful figure of speech" was not meant literally, since his overall comments clearly signaled a desire to retaliate against the employee, the interrogation violated the Act.

[35] 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 989 (1982).

inform him of Garcia's new position with the Union. Rivera testified that he knew Garcia was the union delegate for the emergency room. As Rivera put it, Garcia was "a key person of the Union in the emergency room." (Tr. 455.) Rivera also testified that he observed Garcia's participation in "various manifestations or picket lines of the Union." (Tr. 433.) He reported that he knew that Garcia discussed working conditions at the Hospital with his coworkers and had urged his colleagues to participate in the October 2001 strike. He agreed that Garcia was "active in the Union." (Tr. 450.)

Garcia's involvement in union activities reached a higher degree of visibility on February 27, 2001, when he attended his first collective-bargaining session. Lacot testified that it was at this point that she became aware that he was a union delegate. Shortly thereafter, in a warning letter to Garcia, Lacot acknowledged that Garcia felt persecuted by management "because you were a Union Shop Steward." (R. Exh. 2b.) Finally, I note that when Felix interrogated Garcia, he acknowledged both his union membership and his intent to participate in an upcoming union protest. I readily find that the Hospital was aware of the nature and extent of Garcia's participation in protected, concerted activities.

I must now determine whether Garcia's union activities were a substantial or motivating reason for the Hospital's decisions to suspend and terminate him. In so doing, it is appropriate to evaluate both direct and circumstantial evidence of motivation. *Metro Networks, Inc.*, 336 NLRB 63, 65 (2001), citing *FPC Moldings, Inc. v. NLRB*, 64 F.3d 935, 942 (4th Cir. 1995). It is also appropriate to consider relevant evidence beyond the strict confines of the charged conduct. *Meritor Automotive, Inc.*, 328 NLRB 813 (1999) ("well settled that conduct that exhibits animus but that is not independently alleged or found to violate the Act may be used to shed light on the motive for other conduct that is alleged to be unlawful.") I find that there is persuasive direct and circumstantial evidence leading to the conclusion that antiunion animus was a substantial and motivating reason for the decisions to suspend and terminate Garcia.

As to direct evidence, there can be nothing clearer than Felix's observation to Garcia that his participation in union activities was the reason that he was "always in trouble." (Tr. 94.) Here one of Garcia's supervisors has drawn a direct link between the protected, concerted activity and the Hospital's imposition of disciplinary sanctions. Similarly, I find that there is direct evidence establishing that the Hospital's management intended to impose disparate treatment upon Garcia because of his position with the Union. It will be recalled that Garcia had been incorrectly accused of behaving disrespectfully toward a patient. A meeting attended by a number of interested parties including Lacot and Vega resulted in Garcia's exoneration. Vega testified that immediately thereafter she had a conversation with Lacot. At that time, Lacot told Vega that:

> those attitudes of Mr. Garcia's at the [H]ospital could not be tolerated by the Hospital, and that that could bring about his dismissal, and, even more so, when he was the delegate.

(Tr. 52.) Vega also testified that during this conversation, Lacot displayed a letter terminating Garcia. In light of his exoneration, she proceeded to tear up this letter in Vega's presence.

The Hospital adduced extensive testimony from Lacot. She was asked about the incident with Vega. Lacot denied tearing up a letter in Vega's presence. She opined that Vega was "lying" about this. (Tr. 483.) Strikingly, she did not give any testimony regarding Vega's assertion that Garcia's attitudes could not be tolerated, particularly given his role as union delegate. As another administrative law judge has observed,

> When a party calls as part of its case-in-chief a witness with particular knowledge of important facts, who does not testify as to those facts, an adverse inference is warranted that the witness' testimony would not have supported the party's position.

World SS, Inc., 335 NLRB 1203, 1216 (2001). Beyond reliance upon such an inference, I also credit Vega's testimony because her description of Lacot's attitude is consistent with other substantial evidence of Lacot's animus toward Garcia and her desire to magnify the extent of any alleged misconduct by him. For example, despite her repeated acknowledgement that the photo of Garcia was a personal matter that should not result in imposition of discipline, she twice made detailed reference to it in written disciplinary accounts that became part of Garcia's personnel record. The same mindset is illustrated by Lacot's characterization of Garcia's conduct regarding his niece's illness. Lacot persistently claimed that Garcia's departure from the Hospital to attend to this situation was an abandonment of his workstation without authorization. This charge of very serious misconduct is asserted in the face of clear evidence establishing that Garcia had sought permission from Supervisor Santiago and, at Santiago's request, had even reduced his request for permission to a rudimentary written form. I find Vega's uncontroverted description of Lacot's comments to be credible as it is consistent with other evidence regarding Lacot's attitude toward Garcia.

Finally, I find that there is direct and virtually contemporaneous evidence of antiunion animus on the part of the official who made the final decision to terminate Garcia. It will be recalled that a week after Executive Director Cora terminated Garcia, he wrote a letter to each employee who had not participated in the work stoppage of October 24–26. His letter contrasts the "personal dedication and duty towards the patient" of nonstriking workers with the negative behavior of "persons with interests different from that of the patient's welfare." The obvious reference is to the striking employees. More importantly, Cora placed a copy of this letter in the personnel file of each nonstriking employee. Taken together, the views expressed in the letter and the decision to memorialize the role of nonstriking employees in their personnel records are reflective of antiunion animus on the part of the same official who decided to terminate Garcia just a week earlier.

In reaching a decision to accord probative value to Cora's letter, I have been mindful that use of opinions expressed in employer's letters as evidence of antiunion animus has provoked recent comment by Board Members. In *Norton Healthcare*, 338 NLRB 320 (2002), the Board affirmed an administrative law judge's finding of antiunion animus on the part of the employer. In a separate opinion, Member Cowan stated that he would not use an employer's statements opposing the union as

evidence of animus "in any circumstance." He observed that statements that do not contain threats or promises are protected by Section 8(c) of the Act. Supra at 3, fn. 3. Member Bartlett noted that he did not rely upon the employer's "general statements expressing opposition to the Union as evidence of animus." Supra at fn. 1. However, he acknowledged that Board precedents permitted reliance on such statements for this purpose. Member Liebman agreed with this analysis, commenting that under Board precedent, "such statements may properly be considered as background evidence of animus." Supra at fn. 1. I note that a relatively recent example of such usage occurred in *Metro Networks*, 336 NLRB 63 (2001), where, in a discharge case, the Board held that "[m]otive and antiunion animus are demonstrated" where an employer wrote a letter to his employees expressing disappointment that they had voted for union representation. Id. at 65.

While Board precedents permit consideration of Cora's attitudes as expressed in his letter, I acknowledge the concerns discussed above. In my view, these concerns are not directly implicated in this case. Cora's behavior went beyond the mere exercise of free speech or expression of opinion. When Cora decided to place a copy of each letter in the nonstriking employees' personnel records, his behavior became a form of conduct. As I have previously indicated, this conduct, consisting of the placing of letters in personnel files, created a permanent record of each employee's decision to participate or withhold participation in protected, concerted activities. Indeed, Cora explicitly said he was putting the letters in the personnel files "as a reminder of your performance." (C.P. Exh. 3b.) Thus, by memorializing a commendation of nonstriking employees in contrast to striking employees, Cora engaged in conduct that may properly be considered as convincing evidence of antiunion animus.

Beyond the direct evidence of antiunion animus as a motivating factor in the suspension and discharge of Garcia, I find a variety of circumstantial evidence supporting the same conclusion. First is the evidence of timing. I note that the Board has recently reiterated that timing is evidence of such probative worth that, even standing alone, it may demonstrate antiunion animus as motivation for an employer's actions. *Sears, Roebuck & Co.*, 337 NLRB 443 (2002), citing *Masland Industries*, 311 NLRB 184, 187 (1993), and *NLRB v. Rain-Ware, Inc.*, 732 F.2d 1349, 1354 (7th Cir. 1984). The evidence of timing in this case is compelling.

Garcia began working at the Hospital as an emergency room nurse in February 1995. The Respondent took over operation of the Hospital in June 1998. The Union was certified as the employees' representative in August 1998. Garcia became emergency room delegate in January 1999. Rivera imposed written discipline against Garcia on February 2, 1999. Rivera testified that Garcia had never had any prior written discipline. Indeed, Rivera was unable to recall even one episode in which he had subjected Garcia to verbal criticism. Thus, although Garcia had been employed in his position for almost 4 years, his first disciplinary citation was imposed immediately after his selection as union delegate.

Just as Garcia's disciplinary problems commenced as he increased his union activities, so his disciplinary problems culminated during a similar period of heightened union activity. Garcia testified that a work stoppage was planned for October 2001. He took an active role in the preparations, urging his emergency room colleagues to participate. The record also indicates that his role was effective, as the emergency room employees had the highest level of involvement in the work stoppage. The evidence further shows that management knew of the planned work stoppage, having been notified by the Union over a week before Garcia's termination. In addition, management was specifically aware of Garcia's activities in connection with this upcoming work stoppage. Rivera testified that he knew that Garcia favored the planned strike and was enlisting other employees to support it. It is precisely during Garcia's active participation in this period of heightened union activity that he was terminated.

In addition to the evidence of timing, I find circumstantial evidence of antiunion motivation in the Hospital's repeated exaggeration of Garcia's purported misconduct and in the existence of substantial gaps in the evidence that one would reasonably have expected the Hospital to present. In evaluating whether the Hospital has presented a rational and consistent account of its conduct, I begin by observing that a disturbing pattern of seemingly intentional exaggeration of Garcia's asserted misconduct is present. A particularly significant example of this behavior concerns the photograph of Garcia displaying a portion of his underwear. This photo was taken outside of the work premises while Garcia was off-duty. There is no evidence that he owned the copy of the photo that came into Lacot's possession on the Hospital's premises. Lacot has agreed that this incident was not worthy of discipline as it was a private matter. Nevertheless, she chose to raise it at a meeting and repeatedly documented it in written descriptions placed in Garcia's personnel file. This was particularly damaging as the incident is presented as involving an aura of sexual impropriety. Indeed, in his opening statement during this trial, counsel for the Hospital made this innuendo even more explicit. He characterized Garcia as, "[a] guy that leaves photos of sexual nature in his work place, exposing himself . . . ." (Tr. 32.) I must reiterate that there is no evidence that Garcia left even one photo of a sexual nature at his workplace. And, there is certainly no evidence that he exposed himself, unless one is so prudish as to consider a view of a portion of the rear of an undergarment as indecent.[36] The intentional and repeated exaggeration of allegations hinting at some sort of sexual misconduct strongly suggests an underlying animus against Garcia.

The same inference of animus arises in connection with the Hospital's contention that Garcia abandoned his workplace. This is a grave allegation when it is directed at a medical professional, particularly an emergency room nurse. The evidence clearly establishes that it is an entirely misleading characterization of Garcia's conduct on the night in question. There is no doubt that he sought and obtained authorization from his superior before he left his duty station to attend to a family emergency. Beyond this, the Hospital also attempted to exaggerate other aspects of this incident to cast Garcia in a bad light. The

[36] By this standard, in carrying ads for underwear, virtually every newspaper in America would qualify as indecent.

suggestion is raised in Lacot's disciplinary letter that Garcia's actual reason for leaving his shift was something other than his stated reason. Counsel for the Hospital also raised this during cross-examination of Garcia by suggesting that Garcia had gone to visit his lover. There is absolutely no evidence that Garcia's stated reason for leaving the Hospital that night was false. To the contrary, I find that there is highly credible evidence that it was true. I am referring to the testimony of Nurse Cedeño, hardly one of Garcia's partisans. She testified that, while in a highly disturbed state, Garcia told her that he had to leave to attend to an emergency at his sister's home.

The pattern of exaggeration regarding this incident went further. In his opening statement, counsel for the Hospital promised to present evidence showing that on his return to the Hospital, Garcia resumed his nursing duties while walking around barefoot. In fact, the evidence shows that he had soiled his shoes and, in order to avoid contamination, removed them. When his supervisor observed him in his socks, she helpfully provided shoe covers for him to wear. Thus, in proper context, this conduct hardly matches the dramatic image of a nurse who goes to work barefoot. These intentional distortions indicate animus.

The gaps in the Hospital's documentation of its actions are also probative. Lacot testified that during the 2-year disciplinary process involving Garcia, there were:

> between 20 and 25 informal meetings. And about 25 or more formal meetings. And when I speak of formal meetings, I speak of meetings that have been written down, in a narrative manner.

(Tr. 505.) Where are these 25 or more written narratives regarding the disciplinary process? No more than a handful of written disciplinary documents were submitted by the Hospital.[37] Furthermore, the official who made the actual decisions to suspend and terminate Garcia, Executive Director Cora, was never called to testify regarding his reasoning for reaching these determinations. The failure to present such documentary evidence and testimony is also evidence of motivation. The Board has referred to the adverse inference that may be drawn when a party fails to call a witness who may reasonably be presumed to be favorably disposed to its position as a "settled" doctrine. *Daikichi Corp.*, 335 NLRB 622 (2001). This type of inference is properly applied to these significant gaps in the Hospital's evidence.

Persuasive direct and circumstantial evidence demonstrates that a substantial and motivating reason for the decisions to suspend and terminate Garcia was antiunion animus directed toward Garcia's active and effective participation in protected, concerted activities. As a result, the burden now shifts to the Hospital to demonstrate that it would have taken the same disciplinary actions against Garcia regardless of his participation in protected, concerted activities. The Hospital contends that Garcia's suspension and discharge were merely the result of the impartial operation of its system of progressive discipline.[38]

In order to assess the Hospital's defense, I have first examined the evidence adduced regarding discipline of other employees. Rivera and Lacot, two supervisors who made key decisions concerning Garcia, testified as to their imposition of discipline on other employees. Rivera testified that he disciplined five other nurses during the period involved in this case. Virtually all the disciplinary problems with these employees concerned absenteeism.[39] Discipline consisted of verbal warnings, anecdotal warnings, and referrals to human resources. Neither Rivera nor Lacot testified regarding the precise discipline imposed by the human resources department upon such referrals. I do note that on August 25, 1999, Rivera issued Garcia an anecdotal report regarding absences without proper notification. Lacot testified that after this episode, Garcia corrected his problem with absenteeism.[40] Lacot also testified that the impact of an anecdotal terminates after one year of good conduct. Thus, she reported that if an employee receives an anecdotal warning for absenteeism, and he or she avoids further absenteeism for the period of 1 year, the anecdotal expires. As she put it,

> If a year has gone by, and the employee does not incur in this same error, we do not consider it.

(Tr. 594.) More than a year of good behavior concerning absenteeism had elapsed prior to Garcia's suspension and termination. As the Hospital does not contend that Garcia was suspended or discharged, in whole or in part, for absenteeism, the evidence does not permit me to compare Rivera's discipline of other employees with his steps taken against Garcia.

Lacot also described her disciplinary decisions regarding other employees during the relevant period. She testified that she fired two clerical employees for insubordination. She also fired one unnamed nurse for "tacit absenteeism."[41] (Tr. 490.) This offense consisted of being absent from work for 3 days without providing any notice to the employer.

Lacot testified that Garcia's conduct regarding the girl who had fainted after taking too much medication violated the provisions of the disciplinary manual covering insubordination.

[37] I recognize that it is possible that Lacot's claim as to the existence of many purported disciplinary write-ups that were not admitted into evidence is merely another exaggeration of the case against Garcia.

[38] The Hospital raised other defenses. Without presenting evidence or argument in support, it contended that the Religious Freedom Restoration Act of 1993, 42 U.S.C. §2000bb-1, precluded the Board's exercise of jurisdiction over it. I note that the Board rejected a similar contention in *Ukiah Adventist Hospital*, 332 NLRB 602 (2000). Counsel for the Hospital also cited provisions of local law governing discharge of employees. However, he correctly noted that these are merely "supplementary," since the "controlling legislation is the [National Labor Relations] Act." (R. Br. at 4.)

[39] Rivera testified that one employee also had failed to maintain her professional credentials and another employee had unspecified "situations in the department." (Tr. 390.) Garcia had no problems with credentials and the testimony about unspecified situations is too vague to be useful.

[40] This is consistent with her statement to the same effect in the May 11, 2001 letter informing Garcia of his suspension. (J. Exh. 3b.)

[41] The disciplinary manual defines this offense as "service abandonment." (GC Exh. 5, at 4.) It is a separate offense from other forms of less serious absenteeism.

This is difficult to credit. The manual defines insubordination as the refusal to comply with "specific orders" from a supervisor. It also includes "lack of respect to a supervisor." (GC Exh. 5, at 7.) Garcia did not fail to comply with any order. If he conveyed a diagnosis to the patient's parent as alleged, then he may well have engaged in some form of misconduct, but I do not see how it can be characterized as a lack of respect to a supervisor. Significantly, while this incident is discussed in the letter terminating Garcia, it is not described as an offense of insubordination. Instead, it is described as a failure to "comply with the privacy and confidentiality of the information." (J. Exh. 4b.) In any event, Lacot did not testify as to the nature of the insubordination leading to the discharge of the two clerical employees. As a result, I cannot compare Garcia's purported discipline for this type of alleged misconduct with discipline imposed on others for insubordination offenses. As previously discussed, the termination of another nurse for failure to attend work for 3 days without notice bears no relation to any alleged misconduct by Garcia. For these reasons, the evidence is not sufficient to permit meaningful comparison of Lacot or Rivera's discipline of Garcia to that of other employees during the relevant period.

Although useful comparative data is lacking, I have given careful consideration to the Hospital's contention that Garcia's conduct justified his suspension and discharge regardless of his participation in protected, concerted activities. I begin by noting that virtually every supervisory employee called as a witness by the Hospital expressed an overall opinion of Garcia's professional competence as a nurse. The consistency of these opinions from a variety of sources is impressive. The only physician to testify was Dr. Anglero. He testified that his working experiences with Garcia have been "good." (Tr. 220.) When asked if Garcia is a good nurse, he responded affirmatively.

Garcia's immediate supervisor was Rivera. He testified that, as to the clinical aspect of his work, Garcia "did not have any problems." (Tr. 396.) He underscored this by observing that:

> His major problem was interpersonal relations, attitude toward his coworkers. And that is all.

(Tr. 396.) Indeed, during another portion of his testimony, Rivera opined that Garcia had the potential to become a supervisor, but needed to change his negative attitude. (Tr. 466.)

Lacot testified that Garcia was a "good nurse from 1995 until 1999." She added that, regarding the technical aspects of his duties as a nurse, "he knows his work." (Tr. 528.) These views are also consistent with her comments to Garcia contained in a disciplinary letter that she wrote on July 27, 2000. At that time, she told Garcia that:

> We informed you that we never doubted your competence as a professional but that you had to improve your attitude . . . .

(J. Exh. 2b.)

Two other supervisory employees expressed similar views. Felix, the general supervisor of nursing services, was asked about his experiences with Garcia. He responded that, "It was a normal experience of an employee who carries out his job." (Tr. 285.) Regina Santiago, the clinical coordinator of the department of medicine, testified that she supervised Garcia for 3 years. She was asked if he was a good nurse. She responded, "Yes, he is a good nurse." (Tr. 303–304.)

With this general background, I have turned to consideration of the Hospital's specific reasons for Garcia's suspension and discharge. The Hospital's position as to Garcia's suspension is set forth in Lacot's formal letter imposing the suspension. Its position regarding Garcia's discharge is set forth in Lacot's formal letter discharging him and the Hospital's brief filed in this case.

Lacot's letter informing Garcia of the reasons for his suspension begins by noting that Garcia was interviewed regarding events occurring on April 23, 2001. Lacot goes on to observe that Garcia's coworkers had needed to call him on the loudspeaker on two occasions so that he could provide access to the narcotics cabinet. Although this is mentioned, it is clear that the gravamen of Garcia's offense on that date consisted of his using the loudspeaker to complain that there was a lot of work and that he was the only one working and nobody was helping him.[42] Lacot notes that this conduct "bothered your coworkers, thereby disrupting the normal operations" of the Emergency Room and the Hospital. (J. Exh. 3b.) As a result, Lacot states that discipline is being imposed "due to your attitude and for disrupting the peace and the work that is being done at the Emergency Room." (J. Exh. 3b.)

Examination of the Conduct and Disciplinary Measures Manual reveals that the disciplinary infraction described by Lacot is the offense of "Disorderly Conduct." This is described as conduct that would:

> Disturb the peace and order of the Institution or the duties that are being carried out at the job.

(GC Exh. 5, at 7.) Lacot's letter indicates that the suspension is being imposed for this infraction.

In her letter, Lacot acknowledges that Garcia denied any intent to insult his coworkers, but was merely seeking to have them come to his assistance with the patients. It does appear that two of Garcia's colleagues filed written complaints about his behavior on that date. Only one of these letters was admitted into evidence. In that letter, Nurse Cedeño discusses the problem with access to the narcotics key. She never mentions any loudspeaker announcement by Garcia, but she does request that Garcia "assume another attitude towards his fellow workers and the patients." (R. Exh. 3b.) There is no evidence regarding the nature of the second coworker's written complaint.

Did Garcia's conduct in using the loudspeaker constitute a disturbance of the peace or an interference with the work being carried out by the emergency room staff? It will be recalled that during the shift in question, the emergency room was severely understaffed. Instead of the usual complement of seven nurses, there were only four. In addition, the escort who usually transported lab samples was not on duty. As a result, Garcia felt compelled to make the deliveries to the lab himself. There is no doubt that he felt frustrated and he may have chosen an undiplomatic means of seeking more staffing assistance.

[42] It will be recalled that in her testimony, Lacot described the narcotics key problem as a minor offense.

Having said this, it is difficult to understand how his conduct could have consisted of a disturbance of the peace. There is no evidence that he employed obscene or threatening language or that any coworker, patient, or other person who heard the comments was incited to any violent action or response. Likewise, there is no evidence that Garcia's statement caused any disruption in the work of the nursing staff or of the Hospital in general. At most, what the evidence shows is a brief outburst by a worker on a shift that was short-staffed who felt frustrated at the quantity of work and the lack of assistance. I do not find that the Conduct and Disciplinary Measures Manual authorizes imposition of a 10-day suspension for this behavior for the offense of disorderly conduct. Furthermore, I cannot find that Garcia's behavior on this occasion provided independent justification for his suspension apart from the animus directed against him due to his protected activities.

Lacot's letter explaining the rationale for Garcia's discharge refers to his abandonment of his work station without authorization and his "failing to comply with the privacy and confidentiality of the information" involving the girl who fainted after ingesting too much pain medication. (J. Exh. 4b.) These events, coupled with Garcia's prior disciplinary history, are listed as the justifications for his termination.

In its brief, the Hospital provides a more extensive list of infractions justifying the ultimate sanction of dismissal. It is alleged that Garcia's departure from the emergency room with the narcotics key consisted of careless and negligent conduct in violation of the Conduct and Disciplinary Measures Manual Rule 4. (R. Br. at 7, 13.) His is charged with abandoning his job by leaving the Emergency Room to attend to a family matter. (R. Br. at 13.) He is further charged with falsifying hospital records in violation of rule15 of the manual. (R. Br. at 15, 18.) He is also accused of misconduct involving the girl who overdosed on pain medications. This is not alleged to have violated any specific conduct rule in the manual, but is characterized as "disobeying the medical confidentiality standard." (R. Br. at 24.) Lastly, it is alleged that Garcia "was also involved in interpersonal attitudes which . . . affected the work environment." (R. Br. at p. 24.) (Emphasis in the original.) I will examine each of these charges in turn.

The charge that Garcia engaged in careless and negligent conduct by deciding to transport laboratory samples while in possession of the narcotics key in unimpressive. On a shift when the emergency room was seriously short-staffed, Garcia was faced with a dilemma. He elected to take samples to the laboratory to ensure that they were promptly analyzed in order to obtain timely treatment for the patients. In so doing, he took the risk that there would be delays in obtaining access to the narcotics cabinet. Had he made the opposite decision, there would have been delays in obtaining laboratory test results needed for assessment of patient's conditions. It was the lack of staff that placed Garcia (and the patients) on the horns of this dilemma. The evidence does not permit a conclusion that Garcia's choice constituted professionally careless or negligent conduct. Indeed, it will be recalled that Lacot conceded that the problems with the narcotics key were an example of a minor offense committed by Garcia. If an offense at all, it was certainly not of a severity that, even in conjunction with other offenses, would justify discharge of a nurse whose competence was acknowledged by every supervisor who expressed an opinion during the trial.

The charge that Garcia left his duty station without prior authorization to attend to a family matter is certainly an example of serious misconduct of a degree that would justify severe sanction.[43] Unfortunately, that charge is a canard. The evidence overwhelmingly establishes that Garcia sought and obtained prior authorization before leaving the Hospital for a period of less than 2 hours to attend to a family member's medical condition. Any attempt by the Hospital to justify Garcia's termination on this basis is simply more evidence of animus against him by use of pretextual arguments to justify his firing.[44]

The employer next asserts that Garcia falsified hospital records in violation of rule 15 of the manual. Rule 15 imposes sanctions on an employee who falsifies or "maliciously alter[s]" documents of the Hospital. (GC Exh. 5 at 8.) The evidence establishes that Garcia altered a hospital record. It does not establish that he falsified the record or altered it maliciously. Rather, the patient's physician testified that Garcia's error in this instance was the failure to note and initial the change in the patient's documentation. Examination of the record in question confirms that there was no intent to conceal information. Garcia's change of the documentation was readily apparent. Rivera counseled Garcia on the proper procedures to be used in the future. Rivera testified that Garcia had not had any further problems in this regard. I do not find that this incident violated rule 15 or justified the Hospital's conduct.

The next asserted justification for Garcia's termination concerned the incident of the girl who fainted after ingesting too much pain medication. Counsel for the Hospital suggests that Garcia's behavior violated the standards of medical confidentiality. His reference must be to the accusation that Garcia called "911" without authorization. Since I have found that Garcia's explanation of how social services was automatically contacted once the school telephoned for an ambulance was both logical and unrebutted, a violation of standards of confidentiality cannot be sustained.

Counsel for the Hospital's last allegation was that Garcia's discipline resulted in part from his "interpersonal attitudes which . . . affected the work environment." (R. Br. at 24.) (Emphasis in the original.) Counsel's inclusion of this as being among the Hospital's purported justifications for Garcia's discharge is clearly supported by the evidence. In fact, the pre-

[43] In this regard, I agree with counsel for the Hospital, who cited *NLRB v. Lowell Sun Pub. Co.*, 320 F.2d 835 (1st Cir. 1963), as a precedent. In that case, the Court found that the employer's motive for discharging the employee was the employee's conduct in having twice absented himself from the job "without seeking or receiving permission from his supervisors." 320 F. 2d. at 841. By contrast, Garcia sought and obtained such permission before taking his brief absence to attend to his niece.

[44] See *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466, 470 (9th Cir. 1966) (where employer's stated motive is found to be false, an inference may be drawn that the employer is trying to conceal an unlawful motive). The Board has characterized this doctrine as "well settled." *Key Food*, 336 NLRB 111, 114 (2001).

dominant management complaint about Garcia's conduct from February 1999 until his discharge was that he had attitude problems. I have no doubt that those attitude problems were a paramount factor in the decisions to suspend and discharge him. I cannot, however, exonerate the Hospital on the basis that it relied upon such attitude problems as a proper justification for Garcia's discipline. To the contrary, such reliance on purported attitude problems underscores the impermissible nature of the Hospital's decision-making process in this case.

In the first written discipline Garcia received, he was warned to avoid "negative criticism." (GC Exh. 2b.) The author of this letter, Rivera, amplified his understanding of the nature of Garcia's attitude problem in his testimony. He testified that it included "criticisms about the work program." (Tr. 430.) Indeed, Rivera testified that Garcia would "tell workers to complain about the program . . ." (Tr. 431.)

Lacot also described the nature of Garcia's attitude problem. In a disciplinary letter, she told Garcia that his "problem" was that he made comments about "work shifts, the days off, the apparent favoritism of the Supervisor toward some of your coworkers . . ." She went on to tell Garcia that "[y]ou frequently act as a 'leader' of the group . . ." The importance of Garcia's perceived attitude problem to the Hospital's management was underscored in Lacot's letter when she acknowledged that "you are complying with your work, but . . . your attitudes are affecting you . . ." (J. Exh. 2b.)

The central importance of Garcia's purported attitude problem was highlighted and explained by Lacot's discussion with Vega, wherein she informed Vega that:

> those attitudes of Mr. Garcia's at the [H]ospital could not be tolerated by the Hospital, and, that that could bring about his dismissal, and, even more so, when he was the delegate.

(Tr. 52.) It is apparent that Garcia's attitude problem was the key factor in his discharge. It is equally apparent that this attitude problem consisted largely in articulating the concerns and discharging the duties of union delegate.[45]

I find this case to be similar to a relatively recent case, *Tubular Corp.*, 337 NLRB 99 (2001), where the Board upheld an administrative law judge's finding of discriminatory discharge of an employee. The judge noted that the company attempted to justify the discharge by alleging that the employee had repeatedly engaged in "disruptive" conduct.[46] The judge observed that this often meant that:

> he talked to employees about things that they [management] didn't want the employees talking about.

337 NLRB at 105. The judge characterized management's concern as "a code word" for unhappiness with the employee's propensity to stir up other employees and get them interested in union activity. The judge concluded that:

> Assuming, without deciding, that the investigation did disclose that [the employee] had an overbearing personality, Respondent tolerated that for three years and accorded no discipline to [him] for it. It was, obviously, not the real reason for his discharge. To the extent it was relied upon, Respondent seized upon it as a pretext.

Slip op. at 8–9. By the same token, and for the same reasons, I find that the Hospital's reliance on Garcia's attitude problem as justification for his suspension and discharge is merely another way of saying that the Hospital's conduct was based upon an unlawful motivation, antiunion animus.

I have considered all of the reasons advanced by the Hospital in support of Garcia's suspension and discharge. I have also evaluated these asserted reasons in the context of the evidence, including the consistent testimony of the Hospital's managers establishing that Garcia was an experienced and competent emergency room nurse. The Hospital's proposed justifications for its disciplinary decisions, considered singly and in combination, do not serve to rebut the General Counsel's contention that a motivating and substantial factor in Garcia's suspension and discharge was his union activity. The Hospital has not met its burden of showing that it would have suspended and discharged Garcia apart from consideration of such union activity. For these reasons, I conclude that Garcia's suspension and discharge constituted violations of Section 8(a) (1) and (3) of the Act.

CONCLUSIONS OF LAW

1. By interrogating Garcia regarding his union sympathies and his protected, concerted activities the Respondent violated Section 8(a)(1) of the Act.
2. By threatening Garcia with loss of opportunity for promotion and with disciplinary sanctions due to his participation in protected, concerted activities the Respondent violated Section 8(a)(1) of the Act.
3. By suspending Garcia due to his union sympathies and his participation in protected, concerted activities the Respondent violated Section 8(a)(1) and (3) of the Act.
4. By discharging Garcia due to his union sympathies and his participation in protected, concerted activities the Respondent violated Section 8(a)(1) and (3) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I recommend that it be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

With regard to affirmative relief, the Respondent having discriminatorily suspended its employee, it should be ordered to make him whole for any loss of earnings and other benefits, arising from his suspension, plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent having discriminatorily discharged its employee, it should be ordered to offer him reinstatement and to make him

[45] I recognize that management also disliked other aspects of Garcia's attitude. For example, he was described as a gossip. I note that Lacot conceded that engaging in gossip was merely a "minor" offense. (Tr. 627.) It is evident that Garcia's main attitude problems were that he complained about work-related issues and incited other employees to do the same.

[46] The Hospital did not employ this precise term in characterizing Garcia's "attitude problem." However, counsel for the Hospital described Garcia as having an "unruly work pattern." (R. Br. at 4.) The meaning is essentially identical.

whole for any loss of earnings and other benefits, computed on a quarterly basis from the date of discharge to the date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, supra.

As part of the remedy in this case the General Counsel seeks an order requiring Respondent to reimburse Garcia "for any extra federal and/or state income taxes that would or may result from a lump-sum backpay award." (GC Exh. 1vv at 4.) The General Counsel did not provide any supporting authorities for this request. The Board has addressed identical requests in recent cases, noting that granting such relief would require a change in Board law, and declining to order such a change absent full briefing of the issue by the affected parties. For example, see: *Ishikawa Gasket America, Inc.*, 337 NLRB 175 (2001). In light of the Board's refusal to consider the proposed change in law absent full briefing, I do not recommend this proposed relief.

Both the General Counsel and the Union have requested that the Hospital be ordered to post an appropriate notice in both English and Spanish. Since all of the witnesses at trial indicated that Spanish was their primary language, this is appropriate and I recommend that it be done. See: *Amber Foods, Inc.*, 338 NLRB 712 at fn. 2 (2002).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[47]

ORDER

The Respondent, Hospital Cristo Redentor, Inc., of Guayama, Puerto Rico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively interrogating Carlos Garcia or any other of its employees regarding their union sympathies or participation in protected, concerted activities.

(b) Threatening Carlos Garcia or any other of its employees with loss of promotional opportunities or imposition of disciplinary sanctions for engaging in protected, concerted activities.

(c) Suspending or discharging Carlos Garcia or any other of its employees due to their union sympathies or participation in protected, concerted activities.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Carlos Garcia full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Carlos Garcia whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of the decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful suspension and discharge of Carlos Garcia, and within 3 days thereafter notify Carlos Garcia in writing that this has been done and that the suspension and discharge will not be used against him in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post in both English and Spanish at its facility in Guayama, Puerto Rico copies of the attached notices marked "Appendix."[48] Copies of the notice, on forms provided by the Regional Director for Region 24, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 11, 2001.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 24, 2003

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf

[47] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[48] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT coercively question you about your union support or activities.

WE WILL NOT threaten you with loss of promotional opportunity or with disciplinary action because of your union support or activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the National Labor Relations Act.

WE WILL, within 14 days from the date of the Board's Order, offer Carlos Garcia full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Carlos Garcia whole for any loss of earnings and other benefits resulting from his suspension and discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful suspension and discharge of Carlos Garcia, and WE WILL , within 3 days thereafter, notify him in writing that this has been done and that the suspension and discharge will not be used against him in any way.

HOSPITAL CRISTO REDENTOR, INC.